commodities compared the over-the-road highway accidents of their company drivers and their hired owner-operators that were chargeable to the drivers. The ratios of such accidents per 100,000 miles, leased compared with owned equipment, ranged from 0.39 and 0.46 percent for one carrier to 1.5 and 3.8 percent for another. The ratios of one carrier for nine months in 1948 were 0.62 percent for the leased equipment and 0.60 percent for the company-owned equipment.

The representative carriers herein which oppose restrictions on trip leasing of owner-operator equipment, and support in principle the rules prescribed by division 5, in general do not attempt to evade their responsibility contractually for leased equipment operated in their service, but there are many exceptions. One large carrier comiciled in California, in its contracts with owner-operators of tractors, of whom it hires between 60 and 70, refers to them as "sub-haulers" or "contractors". In the contract these owner-operators assume responsibility for $500 of any actual loss, and the contract provides that the operation of the equipment is at no time under the direction or control of the carrier, and that the driver of the "contractor's" equipment is not in the carrier's employ.

One large household goods carrier having operating authority in 38 States and the District of Columbia and providing service wholly through owner-operator hauling agents, refers to its owner-operator as a "truckman" and the contract contains no provision for assumption by the lessee of carrier responsibility. The contract of another nation-wide carrier of household goods with its owner-operators also omits any provision for the assumption of such responsibility.

[fol. 61] Some 17 of the States[2] regulate in some degree the leasing or interchange of equipment by motor carriers, and many others apparently control these practices through regulations covering the licensing of motor-carrier equip-

[2] Arizona, Colorado, Connecticut, Florida, Georgia, Kansas, Michigan, Missouri, Nebraska, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Texas, Washington, and Wisconsin.

ment, provisions for special permits for substitution of licensed equipment in emergencies, and other requirements.

Under a regulation of the Department of Transportation of State of Washington, in effect since 1935, the driver of a leased vehicle must be an employee of the carrier, and trip- or short-term, leases are not permitted. Any lease must be approved by the department, and its agents located throughout the State are authorized to grant such approval. Household goods carriers supply the department with lists of their leased vans, and if one of such vehicles is brought into the State, the department is notified, and may authorize its operation over the highways of the State by a telegram. The department urges the adoption by us of regulations similar to those proposed by the examiner, particularly the 30-day minimum lease period.

The Wisconsin Public Service Commission recommends that we prescribe regulations which would require that leases be in writing and apply for a substantial period; that compensation based on a percentage of the revenue and subleasing be prohibited, and that the lessee assume full responsibility for and control of the leased equipment.

We conclude that the foregoing summary of some of the practices of the authorized carriers in leasing equipment indicates that many of such practices have facilitated violations and evasions of law and of our regulations, and militate against sound regulation of motor carriers. It is, nevertheless, argued by many of the parties that we need only enforce existing laws and our regulations thereunder in order to eliminate the bad practices that accompany many phases of leasing. According to these parties, vigorous enforcement of the law and of our present regulations would render unnecessary the prescription of additional rules and regulations. We do not agree with this argument. As indicated, at present leasing is in many instances conducted in a loose and informal manner, and this is aided by the lack of any requirement that lease arrangements be reduced to writing. When an itinerant owner-operator obtains a shipment and then attempts to validate the transportation through a later arrangement with an authorized carrier, he is performing unauthorized transportation. If the carrier agrees to the arrangement,

however, and permits the vehicle of the owner-operator to be identified as in the carrier's service, it is obvious that prosecution for unlawful transportation is rendered extremely difficult. There are many arrangements that are on the border-line between unlawful practices and those that have been permitted for lack of any definition of legal leasing, although not always approved.

Under present conditions, it is obviously impossible for our enforcement staff to advise carriers respecting leasing arrangements which are lawful and those which are unlawful. The carriers themselves have no guide as to the practices that are legal. It clearly is our duty to prescribe [fol. 62] rules governing the practices with a view to informing the carriers as to what they may and may not do. When the parties to an arrangement that appears to be unlawful, claim the existence of an oral lease, it is difficult, if not impossible, to prove that the transportation is unauthorized.

We conclude that the record herein warrants the prescription by us of reasonable rules and regulations governing the practices of authorized carriers in augmenting their equipment other than by purchase and in the interchange of equipment, provided we have authority under the act to make such prescription. We proceed to consider the issue of jurisdiction.

[fol. 63] JURISDICTION

It is argued by some of the parties herein that we lack jurisdiction to prescribe any rules and regulations governing the leasing and interchange practices of motor carriers, and others contend that we may not go beyond the rules advocated by A.T.A. and those prescribed by division 5, or similar rules. Many of the parties take the position that the prescription of rules and regulations governing the practices under consideration invades the province of carrier management, and is unconstitutional. We do not consider the court decisions cited in support of the argument respecting the constitutional question relevant to the issue of our jurisdiction to regulate these practices.

The regulation of motor carriers, as well as of rail carriers, water carriers, and freight forwarders is subject to

the national transportation policy, which commands the fair and impartial regulation of all modes of transportation subject to the act, and indicates a Congressional intent to promote safe, adequate, economical, and efficient service, and to foster sound economic conditions in transportation and among the several carriers; and to encourage fair wages and equitable working conditions; and we are required to administer and enforce all the provisions of the act with a view to carrying out this Congressional policy. Regulation of motor carriers under part II of the act has been committed to us in broad general terms, and, under principles applied by the courts to this as well as other administrative agencies, it is left to us to "fill up the details" by the establishment of such reasonable rules and regulations as may be necessary. *United States* v. *Grimaud*, 220 U. S. 506. It is true that the motor provisions of the act, at least since the Transportation Act of 1940, do not refer specifically to the leasing of equipment by such carriers. That is true also with respect to many other aspects of regulation of the carriers that are subject to our jurisdiction. We have not, however, hesitated to exercise the powers that could reasonably be inferred from the provisions of the act in order to implement effectively the Congressional intent, and to "fill up the details" of regulation. In so functioning we have been guided by the reasoning set forth by division 5 in the prior report herein, as follows:

> We have long recognized that in carrying out what we conceive to be the legislative intent, we cannot exercise powers which are neither expressly delegated nor reasonably necessary to effectuate powers that are expressly delegated. *Kansas City S. Ry. Co.* v. *Kansas City Term. Ry. Co.*, 211 I.C.C. 285, and 304. The converse of this rule, of course, is that we have authority that can reasonably be inferred from the provisions of the act, in order to effectuate powers expressly delegated thereunder, and in numerous proceedings this Commission has found that its jurisdiction reasonably could be inferred in respect of powers not specifically mentioned in legislative grants. Among such proceedings are *Contracts of Contract Carriers*, 1 M.C.C.

628, in which it was found that this Commission has authority to require motor contract carriers to perform transportation under contracts or agreements in writing and which conform to certain prescribed essentials; *Keystone Transp. Co. Contract Carrier Application*, 19 M.C.C. 475, in which it was found that under section 209 (a) of the act, this Commission has authority to specify in a permit of a contract carrier, "the commodities to be transported, the equipment to be used, and any other specifications necessary to [for. 64] to describe the service authorized"; *Bell Potato Chip Co.* v. *Aberdeen Truck Line*, 43 M.C.C. 437, wherein it was concluded that despite the omission of specific reparation provisions from part II of the act, damages on account of an unreasonable rate were not recoverable without a determination by the Commission of "what was the reasonable rate whereby they may be measured"; *Investigation of Seatrain Lines, Inc.*, 206 I.C.C. 328, (also related proceedings, *Seatrain Lines, Inc.*, v. *Akron, C. & Y. Ry. Co.*, 226, I.C.C. 7, 243 I.C.C. 199, and *Hoboken Mfrs. R. Co.* v. *Abilene & S. Ry. Co.*, 237 I.C.C. 97, and 248 I.C.C. 109), affirmed by the Supreme Court in *United States* v. *Pennsylvania R. Co.*, 323 U. S. 612, in which it was found that where through routes existed between rail and water carriers the Commission could require the rail carriers to interchange cars with the water carriers; *Keith Ry. Equipment Co.* v. *The Asso. of American Railroads*, 274 I.C.C. 469, in which it was found that this Commission has jurisdiction to pass on the reasonableness of compensation paid for the use of freight cars owned by non-shippers in the past as well as for the future; and *Transportation Activities, Brady Transfer & Storage Co.*, 47 M.C.C. 23, (sustained 80 F. Supp. 110, affirmed 335 U. S. 875), wherein criteria were set forth whereby regular, and irregular-route operations may be distinguished. In all these proceedings, and in many others, in which powers have been exercised which are not especially spelled out in the act, the Commission, as an administrative agency, has fulfilled its obligation to fill out the details of the regulation committed to it,

long recognized as a prerogative of such agencies. In sustaining the Commission's order in the *Seatrain case, supra*, the Supreme Court, at page 616 of its report in *United States* v. *Pennsylvania R. Co., supra*, said:

> There is no language in the present act, which specifically commands that railroads must interchange their cars with connecting water lines. We cannot agree with the contention that the absence of specific language indicates a purpose of Congress not to require such interchange. True, Congress has specified with precise language some obligations which the railroads must assume. But all legislation dealing with this problem since the first act in 1887, 24 Stat. 379, has contained broad language to indicate the scope of the law. The very complexities of the subject have necessarily caused Congress to cast its regulatory provision in general terms. Congress has, in general, left the contents of these terms to be spelled out in particular cases by administrative and judicial action; and in the light of the Congressional purposes to foster an efficient and fair transportation system.

The parties who contend that we lack jurisdiction to adopt rules governing the practices under investigation stress the fact that we can exercise implied powers only in order to effectuate powers that are expressly delegated, and other parties, although conceding that our authority to regulate interstate motor carriers is comprehensive, [fol. 65] argue nevertheless that the act contains no delegation of authority, either express or implied, over the practices under consideration, or any statutory warrant for subjecting them to regulation. They review the various provisions of part II of the act, including those cited in the order instituting the investigation, and, in addition, section 204 (c), not cited therein, and argue that there is a complete absence in such provisions of any legislative grant of authority to regulate the practices of the respondents in augmenting or interchanging equipment. The Household

Goods Carriers' Conference contends that section 202 (a), which gives us general regulatory jurisdiction over transportation by motor carriers in interstate commerce does not confer any specific powers in respect of leasing practices. We think this contention is clearly untenable. Although the language in that section is general in tenor, it is clear and explicit in respect of the scope of regulatory power conferred, and in that respect goes beyond the general regulatory powers in respect of rail carriers provided in section 1 of part I of the act. Section 202 (a) provides as follows:

> The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

In considering this provision it should be noted that the quoted section, as it appeared in the Transportation Act of 1940, was unchanged from section 202 (b) of the Motor Carrier Act, 1935. When the latter statute was under consideration, Congress was advised respecting the operations conducted in non-owned vehicles by the report of the Federal Coordinator of Transportation, entitled "Regulation of Transportation Agencies" (Sen. Doc. 152—73rd Congress, 1st sess.). In hearings on the bill which was enacted as the Motor Carrier Act, 1935, doubt was expressed as to the legal status of the parties to hiring arrangements under which vehicles were driven by the owner or his employee for another party engaged in holding out the service to the public and in arranging for the transportation. The question was whether the owner-operators would be the carriers, and those hiring their services or leasing their equipment would be brokers or freight forwarders, or whether the latter would be the carriers and the owner-operators their agents. See Hearings Before the Committee on Interstate Commerce, U. S. Senate, 74th Congress, 1st Sess., S. 1629, pages 97 to 99, and 155 and 156.

The language respecting the procurement of, and the provision of facilities for, transportation by motor carriers in interstate commerce, contained in section 202 (b) of the Motor Carrier Act, 1935, was added by the Senate committee, and in explaining the addition, the chairman of the committee stated (79th Congressional Record, Page 5650:

> Paragraph (b) * * * Explains the application of the bill and vests jurisdiction in the Interstate Commerce Commission. The Committee amendments broaden the statement to include the operations of brokers which are regulated by later provisions of the bill, and of persons who as lessors of vehicles or otherwise may engage in transportation as common or contract carriers.

[fol. 66] We also observe that to the definitions of a common and a contract carrier in the Motor Carrier Act, 1935, as one "who undertakes to transport * * *," there was added the language "whether directly by a lease or by any other arrangement", which was explained at the time as intended to check evasions of the act by bringing within its terms such transportation operations as were performed through the leasing of motor vehicles or other similar arrangements. Although the quoted language was eliminated in the definitions of a common and a contract carrier adopted in the Transportation Act of 1940, it has been held that the elimination was in the interest of clarity and was not intended to evidence any change in legislative intent. *Thomson* v. *United States, supra.* As we construe section 202 (a), the regulation of transportation [of property by motor carriers engaged in interstate commerce], which elsewhere, [section 203 (a) (19)], together with "services", is stated to include "all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership, or of contract, express or implied", and of the procurement thereof, and the provision of facilities therefor, is vested in the Interstate Commerce Commission. Stated somewhat differently, the section vests in us the regulation of transportation of property by motor carriers in interstate or foreign commerce. Transportation includes all vehicles operated by, for, or in the interest of any motor carrier, irrespective of ownership, or contract, express or im-

plied. In addition we are given regulation of the procurement of such transportation. Unless an unduly strained and narrow construction is to be given to "procurement", it must include methods of procurement, and since transportation includes vehicles, we have authority to regulate the methods of procurement of vehicles used by the carriers subject to our jurisdiction. To find otherwise is to treat the language as superfluous and to fail to accord effect to the legislative intent therein expressed.

We believe that it was Congress' intent where "provision of facilities" last appears in section 202 (a), to include "of" before "the provision", so that "regulation of the provision of facilities" for motor-carrier transportation, is specifically vested in this Commission, as well as regulation of the transportation, and of the procurement of transportation. Unless so construed, there is irrelevantly added to a clause dealing with regulation, the phrase: "The provision of facilities for such transportation is vested in the Interstate Commerce Commission".

We conclude that we have been given ample authority to regulate the leasing practices of the motor carriers subject to our jurisdiction under part II of the act, and to promulgate rules and regulations to be observed by the carriers under section 204 (a) (6), which gives us authority:

> To administer, execute, and enforce all provisions of this part, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration; * * *. Some of the parties argue that this section is merely procedural and in that respect comparable with sections 12 (1) and 17 (3) of part I. The latter section specifically relates to procedure before this Commission. Section 12 (1) states generally our authority to enforce and execute the provisions of part I, but grants specific powers, in contrast to the broad authority conferred by section 204 (a)(6). As stated by division 5, in *Contracts of Contract Carriers, supra:*
>
> [fol. 67] The broad power to prescribe rules, regulations, and procedure necessary for the proper and effective administration of the provisions of the act was intended to be put to practical use.

Our authority to prescribe reasonable rules and regulations under this section was recognized by the Supreme Court in *United States* v. *Resler*, 313 U. S. 57:

Although authority to regulate interchange practices of motor common carriers is not specifically set forth in the act, it would appear that such authority is a necessary concomitant of the authority to enforce the provisions of part II relating to such carriers. They do not have the duty of establishing through routes and joint rates with other such carriers, as do common carriers of passengers by motor vehicle, but they have the privilege of establishing such routes and rates, and, under section 216 (c), of the act, in the case of joint rates, it is the duty of the common carriers parties thereto, to establish just and reasonable regulations and practices in connection therewith. Among the other duties of such carriers, stated in section 216 (b) of the act, is the duty to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to, among other matters, "the facilities for transportation and all other matters relating to or connected with the transportation of property in interstate or foreign commerce". We conclude that our power to enforce this duty is adequate to regulate the practices of the carriers of property relating to the interchange of facilities over through routes that are voluntarily established, in order to prevent unlawful extensions of operating authority and other violations of part II, that would be possible under the cloak of purported interchange, as well as under the guise of leasing.

One further jurisdictional objection remains to be considered. The Manufacturing Chemists' Association and the Household Goods Carriers' Conference argue that the proceeding was not conducted in accordance with the Administrative Procedure Act, because the Director of the Bureau, when testifying in support of regulation of the practices under consideration, did not on the record advocate any specific rules or regulations to govern such practices. Specifically, it is contended that section 7 (c) of the Administrative Procedure Act, relating to evidence, has been violated. In substance, that section provides,

among other matters, that the proponent of a rule or order shall have the burden of proof. On brief, the Bureau took a definite position, and now advocates the adoption of certain specific rules. In developing the record herein, we have had the assistance of many of the parties; some assuming a burden of proof with respect to certain rules and not others. We do not understand that in rule-making investigations conducted under the statute which we administer we are required to assume the entire burden of proof. In any event, as we understand it, there is also a burden resting upon those opposed to the promulgation of rules and regulations such as those contemplated herein. We conclude that there has been compliance with the Administrative Procedure Act; that the arguments relative to the burden of proof are without foundation, and that the record is sufficiently ample to justify the prescription by us of reasonable rules and regulations.

[fol. 68] The final argument by the opponents of regulation herein is that we are precluded from prescribing regulations respecting the augmenting of equipment by authorized carriers by sections 208(a) and 209(b) of the act. These sections contain provisos, relating respectively, to common and to contract carriers, to the effect that no "terms, conditions, or limitations" to be attached at the time of issuance, and from time to time thereafter, to certificates of common carriers and to permits of contract carriers, "shall restrict the right of the carrier to add to his or its equipment and facilities", as the development of the business and the demands of the public shall require. It is argued that if any rules that might be prescribed should have the effect of restricting a carrier's use of non-owned equipment in any respect, we would be accomplishing indirectly that which we are forbidden to do by the provisions referred to. These provisions, as indicated, relate only to the attachments of terms, limitations or conditions to certificates or permits. We have never included in grants of authority any restrictions upon the number of vehicles to be operated, although our authority to impose restrictions against certain types of equipment has been sustained. *Crescent Exp. Lines, Inc.*, v. *United States*, 320 U. S. 401. Reasonable rules respecting the augmenting of

equipment by a carrier in a manner consonant with the provisions of the act and of our regulations thereunder could not, in our opinion, be construed as having the effect of restricting a carrier's right to add to its equipment and facilities. We find no merit in the argument that prohibitions against the prescription of reasonable regulations are contained in sections 208(a) and 209(b).

With a view to determining the nature of the regulations that should be prescribed, we consider next the practices of the carriers in leasing or interchanging equipment, so far as disclosed by the record.

[fol. 69] LEASING AND INTERCHANGE PRACTICES

Regular-Route Common Carriers.—A number of these carriers conduct operations wholly or in part in leased equipment, and with minor exceptions, contend that trip-leasing is an economic necessity. Those whose methods are described on the record are substantial carriers with gross annual revenues ranging up to $9,000,000 in the case of one carrier operating principally in central territory. Only one of these carriers, domiciled at Danbury, Conn., conducts all operations in leased equipment. Its leases are made for a term of one year and are subject to renewal automatically. Only 26 of its more than 100 units are leased from owner-operators, and the others are obtained from a company specializing in equipment rental, and other parties. All equipment is titled and registered in the name of the carrier. Its rental charges are computed on a ton-mile basis, from which the driver's wages are deducted, if an owner-operator, and he is carried on the payroll as an employee.

Another carrier, domiciled at Pittsburgh, leases 310 of the approximately 450 pieces of equipment operated. Its leases are mostly with owner-operators and apply for single trips, although many of the owner-operators have worked for the carrier over a considerable period. About 60 percent of the total volume of its traffic is transported by owner-operators. It does not regard them as employees or consider that it is obligated to provide them with return loads, although its general practice is to endeavor to do so. It compensates the operators on a combination tonnage-

and-mileage basis, and guarantees them a minimum load of 24,000 pounds per trip. The average length of haul by the operators is 426 miles, compared with 197 miles for company drivers. The owner-operators pay license fees and maintain and service their equipment. The carrier requires the operator to turn in his driver's log before being compensated for a trip, and the same requirement is imposed upon company drivers. The latter, however, are also required to submit their logs for the preceding daily or weekly period prior to each trip.

Reference has been made previously herein to a carrier domiciled in California which hires principally owner-operators of tractors. It does not regard them as employees nor guarantee them a return load. Its owner-operators, referred to as "subhaulers," are compensated on the basis of a percentage of the revenue received for the transportation, but if a tractor only is provided, an undisclosed mileage charge is deducted from the owner-operator's share of the revenue. The owner-operators are required to submit their logs covering previous work, before starting on a trip, the same as the drivers of company equipment.

Another carrier, domiciled at St. Louis, employs 20 owner-operators of tractors under 90-day leases, terminable upon 30 days' notice, and utilizes about 15 vehicles each month under trip lease. About 40 percent of the carrier's traffic is transported in owner-operator equipment, and about 15 percent under trip leases. The owner-operators are compensated on a mileage basis. They are placed on the carrier's payroll and their compensation for driving is paid separately from the rental agreed upon for the use of the equipment.

[fol. 70] A large motor common carrier operating over regular routes, domiciled at Detroit, Mich., owns no equipment, but leases approximately 90 percent of the semi-trailers, 50 percent of the tractors, and 60 percent of the pickup and delivery units required in its operations from affiliated corporations domiciled in the States in which the carrier conducts its principal operations, Michigan, Indiana, and Ohio. This is done for the purpose of obtaining the benefits of the reciprocal statutes of these States under

which reciprocity is not granted unless title to the equipment operated over the highways is vested in a corporation domiciled in such State. By having the equipment used in its operations titled in the three States, the carrier reduces its licensing costs and mileage fees. Its representative expressed the opinion that the possibility of a carrier inflating its operating costs through excessive rentals to an affiliated corporation, could be minimized by the Commission requiring disclosure of the affiliate's operating costs, in any proceeding in which a general rate increase is sought, based on increased expenses. This carrier has about 10 percent of its traffic transported by owner-operators under trip leases for its longer hauls. In its experience the use of owner-operators for distances less than 250 miles under trip leases is not practical.

Irregular-route carriers.—A large carrier of general commodities over irregular routes in the territory between Omaha, Nebr., on the west to western New York, on the east conducts about 80 percent of its operations in owner-operator equipment. Its traffic is confined principally to steel in truckloads, for which special loading devices are required, and it has found it difficult to interchange shipments destined to points west of Chicago. At the time of the hearing it had been granted temporary authority to conduct such operations west of that point. For this transportation it used principally livestock haulers under trip lease. According to the witness, the vehicles were properly identified as in the service of the carrier. Although only about 15 to 25 percent of its traffic is transported under trip lease, the carrier contends that any interference with trip leasing would hamper its operations, particularly in the transportation of steel west of Chicago. Its owner-operators are compensated on the basis of a percentage of the revenue.

A carrier domiciled at Richmond, Va., specializes in the transportation over irregular routes of leaf tobacco to redrying plants and redried tobacco from redrying plants to buyers and warehouses. In 1947, it transported about 25 percent of the leaf tobacco grown in the United States and about 45 percent of that grown in the territory in which its principal operations are conducted. The bulk

of the traffic is transported during 17 weeks, August to November. Although the carrier owns about 50 flat-bed trailers, which are said to be adequate for normal operations, it augments its equipment during the marketing season through hauling agreements with approximately 250 produce haulers, farmers, cotton haulers, haulers of other exempt commodities, and with both common and contract carriers. The agreements are for the duration of the marketing season, and are continued in effect from year to year, subject to cancelation on 30 days' notice by either the carrier or the lessor. The lessors are compensated on the basis of a percentage of the revenue, and this carrier contends that compensation based on distance or any method other than that used would be unsatisfactory to [fol. 71] its lessors, because of the short distances for which the transportation is performed. It identifies the leased equipment by placards, and its public liability, property damage, and cargo insurance cover the leased equipment. During the marketing season it maintains temporary field offices within a radius of 50 miles of most of the markets to which the tobacco is transported. Trucks are sometimes dispatched, however, by telephone at distant points, and when the operators send in their receipts for settlement, they are required to turn in their daily drivers' logs.

Automobile transporters. The National Automobile Transporters Association has 115 motor common carrier members. They transport about 90 percent of the new automobiles from places of manufacture and assembly throughout the country. The principal method of transportation, and the one in connection with which equipment is leased, is by truckaway, on special vehicles not adapted to the transportation of any other commodities. Although these carriers are said to engage extensively in the leasing of equipment, principally tractors, they hire relatively few owner-operators under trip leases. Their leases generally are in effect from 30 days to one year. In most instances, the carriers own the trailers or control them under long term leases. The owner-operators are compensated on the basis of a percentage of the revenue; tractor owners receiving usually 65 percent, and the owners of tractor-trail-

ers 75 percent of the revenue. There appear to be very few owner-operators of complete units.

Most automobile carriers which lease tractors from owner-operators pay operating expenses except those incurred in the tractor operation and its licensing, but one large carrier domiciled at Detroit, which hires 195 owner-operators of tractors annually, requires them to buy the tires for the trailers assigned to them. Although it maintains repair shops for its trailers, it does not repair or maintain the tractors of the owner-operators, but the lessors are required to bring the power units into the shop for inspection. This carrier rents the tractors on the basis of a percentage of the revenue, from which drivers' wages at the regular union scale are deducted and paid by separate check. Use of the equipment is vested exclusively in the lessee for the duration of the lease, and the owner-operator is not permitted to work for any other carrier while the lease is in effect.

The operations of three other large carriers of automobiles, as described herein, are generally similar to those just described. There is very little trip-leasing by automobile carriers, except of the equipment of another carrier. Only one of the four carriers, located at Chicago, utilizes owner-operators under a trip lease. About 15 percent of the equipment it uses is obtained on that basis, and the owner-operators supply about 5 percent of its tractor requirements. One of its owner-operators may make four or five consecutive trips from and to various points in central territory, some of them without a revenue load, before returning to the carrier's home terminal. The carrier does not guarantee a return load. It does consider the owner-operator its employee while under lease to it, even when the owner-operator is not transporting a revenue load. This carrier employs no owner-operator unless the operator's logs are made available for the previous 30 days, showing that such operator has had the required hours of rest before working for the carrier.

[fol. 72] Another automobile carrier frequently leases tractor-trailer combinations with drivers from other carriers for short periods, placing the lessor's drivers on its payroll. Its authority extends from St. Louis to Texas

points, among others. On certain traffic originating in Detroit and destined to Texas, in connection with which loaded trailers were formerly interchanged at St. Louis, delivery is now being accomplished through a lease of the originating carrier's tractor and trailer, accompanied by driver. The driver is placed on the lessee's payroll, the lessee places its identification on the leased equipment, and forwards it to the Texas destination. As the lessee's trailers and those of the originating carrier are generally identical, trailer interchange would be possible and has been engaged in to a considerable extent. In view of this fact, it is not clear why the lease arrangement is resorted to. It appears that the manufacturers prefer that their traffic be moved to destination without transfer of lading.

Tank truck operators. Certain of these carriers, which operate principally between points in western trunk-line territory, conduct extensive operations with leased equipment. Equipment under long-term leases is rented principally from owner-operators and compensation is paid on the basis of a percentage of the revenue. One carrier domiciled at Denver, Colo., and operating in a number of western States, owns about two-thirds of the equipment used in his operations and leases the remainder from owner-operators under leases applying for six months, subject to concelation on 30 days' notice. This carrier has sold equipment to drivers who desire to become owner-operators. He has found it more efficient to operate leased equipment out of his terminals, which are widely scattered, than to own sufficient equipment.

These carriers trip-lease equipment from each other. One carrier, domiciled at Cheyenne, Wyo., transported about 34 percent of its traffic for the first 9 months of 1948 on equipment trip-leased from other carriers. The evidence indicates that the other carrier's driver accompanies the leased equipment, but the lessee does not pay the driver's salary. These carriers contend that it would be impossible for them to operate economically if they were required to own sufficient equipment to care for the seasonal demands for liquid petroleum products. For example, to two points in Wyoming, one of these carriers transported no tonnage

in November 1948, whereas to the same points in August 1948, he transported 140,650 gallons of gasoline.

Household goods carriers. These carriers, representing approximately one-fifth of the regulated carriers subject to the act, constitute the largest group of specialized carriers under our jurisdiction, and are subject to the regulations prescribed in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467. As stated previously, about 2,200 are members of the Household Goods Carriers Bureau, which was organized to stabilize the practices and tariff publications of the household goods carriers. The majority are not class-I carriers. Some 1,300 are independent of affiliation with the so-called nation-wide household goods carriers. There are five of these national carriers, namely: Allied Van Lines, Inc., of Chicago, United Van Lines, Inc., of St. Louis, Aero Mayflower Transit Company of Indianapolis, North American Van Lines, Inc., of Fort Wayne, Ind., and Greyvan Lines, Inc., of Chicago. [fol. 73] All of these have operating rights in the 48 States and the District of Columbia, except Greyvan, which holds authority to transport household goods between points in 38 States and the District of Columbia, generally east of the Rocky Mountains.

The use of equipment under leases, largely with carrier-agents, by these nation-wide carriers has steadily increased in recent years. For example, United transported all its traffic in its own equipment in 1946. Mayflower began the use of leased equipment in October 1945, prior to which time it owned all equipment used. North American, until 1939 operated exclusively with leased equipment; from then until 1943, it operated almost exclusively with its own equipment, and since 1943, it has conducted substantial operations with leased equipment. Greyvan in 1936 owned some of the vehicles used in its business, although previously it had conducted operations exclusively in owner-operated equipment. Since the war it has returned to a 100 percent owner-operator plan. Its owner-operators serve it exclusively. Allied Van Lines operates entirely with equipment provided by so-called hauling agents, who have surrendered their interstate rights to Allied, under the cooperative plan approved by us in *Allied Van Lines, Inc.*—

Purchase—Evanston Fireproof Warehouse, 40 M.C.C. 55. The other three nation-wide carriers obtain up to 80 percent or more of the equipment utilized in their operations under master leases, mostly with hauling agents who also have interstate authority as household goods carriers less extensive than that of the nation-wide carriers, under which leases the equipment is made available to the latter carriers upon demand.

As stated, the cooperative plan under which Allied conducts operations has been approved by us. Its agents, most of whom retained local and intrastate rights, surrendered all interstate rights to Allied for a consideration, and own a share of Allied's capital stock. Each of them has entered into an agreement with Allied whereby it agrees to function as an agent for, among other things, the solicitation of traffic, and to provide equipment for the transportation of household goods for Allied. The agreements are entered into for a period of one year, and continue until terminated by the agent on 30 days' notice, or by Allied after 90 days' notice and a hearing. All vehicles are painted in accordance with Allied's specifications, identified as Allied's vehicles, and directed and dispatched by Allied through its general office at Chicago, and branch offices located in different parts of the country. An agent's participation in the profits, depends on whether he only books the shipment, or also provides the equipment for its transportation.

Allied contends that its method of operation was approved in the *Evanston case*, and that it should not be subjected to regulations requiring alterations therein. The rules proposed by the examiner, particularly the one requiring the driver of a leased vehicle to be an employee of the lessee, would be disruptive of Allied's present method of conducting its business. The rules prescribed by Division 5 would not affect Allied, unless construed to mean that a change of possession of the equipment takes place when a member agent withdraws its truck from Allied's service, and uses the vehicle in intrastate service under the agent's own name. The requirement that the vehicle be [fol. 74] inspected by a regular employee when possession is taken by the lessee could not be complied with, because

Allied does not have any full-time employees at the 390 cities and towns where equipment of member agents is located.

Greyvan has 47 branch offices in 26 States and the District of Columbia. Its traffic is obtained principally by 100 employees engaged in solicitation, supplemented by 240 sales agents. The orders for hauling are sent from the Chicago headquarters, which dispatches the vehicles of the 114 owner-operator "truckmen" in which all household movings are performed by Greyvan. The operators receive 50 percent of the revenue earned with the equipment, plus additional percentages for various services, such as packing, and 14 cents a mile when the equipment is deadheaded at Greyvan's direction. Each owner-operator is required to make a cash deposit of $250 when he enters Greyvan's employ. Greyvan carries cargo insurance, but public liability and property damage insurance is paid for by the owner-operator. All operators are given a course of training. If accepted for employment their vehicles are inspected and painted in accordance with Greyvan's specifications. The owner-operators are required to mail daily logs to headquarters and are provided with return envelopes for this purpose. If the operator does not comply with the rules regarding the mailing of logs, he is taken to task by correspondence, and if he then fails to comply, he is called in to the Chicago office. Greyvan has terminated contracts with the operators for violations of law or company rules and instructions. In its contracts with its owner-operators, Greyvan does not assume responsibility as a carrier to the shipper, the public, and the Commission, but it contends that this responsibility is fixed by law. Greyvan does not enter into trip-leases with itinerant owner-operators. It contends that its method of conducting operations produces a better driver than the usual company driver. The evidence indicates that its owner-operators receive higher remuneration than drivers employed on salary.

All except 15 or 20 of North American's agents are certificated interstate carriers or hauling agents, from whom equipment is obtained under master leases. This carrier, however, recently has also resorted to the employment of

owner-operators. At the time of the hearing it owned 4 vans, 4 tractors, and 94 trailers, and had available some 312 units owned by its agents located in 163 cities. In 1947, about 42 percent of its gross revenue was derived from transportation performed by owner-operators, 40 percent from equipment leased from agents, and about 18 percent from owned equipment. For the first 9 months of 1948, 61 percent of the revenue was earned with owner-operator equipment, 32 percent with equipment leased from agents, and 7 percent with its own equipment. The gross revenue for each of the two periods was approximately $3,500,000.

The record indicates that most of North American's owner-operators provide tractors, which are used for drawing company-owned trailers, and that the hauling agents provide complete units. Owner-operators of tractors receive 50 percent of the revenue from the traffic transported, and owner-operators who provide both tractor and trailer are paid 60 percent of the revenue. The hauling agents who provide both units are paid 68 percent of the revenue. [fol. 75] North American pays for public liability, property damage, cargo, and workmen's compensation insurance on vehicles under lease to it, but in the hauling agreements with the agents the lessors are required to reimburse North American for this expense. It requires its owner-operators to carry collision insurance. The agents also agree to pay for vehicle license fees in the States in which they are domiciled, and to indemnify North American if the latter is held liable by reason of negligence or a violation of statute which is the fault of the agent. The hauling agents are furnished with pads of bills of lading. There is no requirement that these be used in proper sequence, and it would be possible for an agent to solicit and transport a shipment in the name of North American without remitting therefor to the carrier. The representative of the carrier had no suggestions as to how the possibility of such violations could be eliminated.

In North American's contracts with its owner-operators the latter are referred to as "contractors". It is agreed that the latter will provide equipment painted in accordance with the carrier's directions, at the contractor's expense, that the latter will pay all costs of operation and

license fees, and bear the cost of insurance protecting the operation obtained by the carrier. The contractor agrees to furnish a fidelity bond, and that the carrier may deduct $50 a month from compensation due the contractor until the amount reaches $250, in order to cover any indebtedness to the carrier. It is agreed that employees of the contractor are under the latter's responsibility and control.

All equipment utilized in North American's service, whether owned by the carrier, an agent, or an owner-operator, is dispatched by an employee of the carrier. Drivers are required to wire the dispatchers from certain specified points. Appended to the driver's daily log is a vehicle inspection report which must be filled out for each 7-day period. Equipment is inspected at regional terminals as well as at the home terminal in Fort Wayne. At the latter point North American maintains a garage for servicing owner-operator equipment at the expense of the owner.

Mayflower is owned by 25 stockholders who have no interest in any other interstate carrier. It owns and operates 14 vans, 366 tractors, and 362 trailers, and employs about 415 drivers. It also has available an average of 510 units under 326 master leases with 435 agents throughout the country. Not all of the agents hold interstate operating authority, but all, except a few, are engaged in intrastate or local household goods transportation. Mayflower has not utilized owner-operators in its service to any substantial extent, but in order to handle the movement of the personnel of a large aircraft factory from Connecticut to Texas, it hired 14 tractors under lease from seven owner-operators, and expected to continue using the owner-operators in its service.

Mayflower leases equipment from agents under a so-called master lease, executed by one of its dispatchers. It reserves the right to reject the driver provided by the lessor. A list of equipment covered thereby is shown on the reverse side of the lease. In the event of changes in the equipment list the agent's copy of the lease is sent in to headquarters and a new lease containing a revised [fol. 76] list of equipment is sent to the agent. The agent bears all expenses of maintenance and repair of the equipment and provides the licenses for the same.

When equipment specified in the master lease is called into Mayflower's service, its dispatcher executes in triplicate a certificate of trip-lease, which describes the equipment, refers to the particular transportation by a trip number, and indicated when it is to be completed. The original is retained by Mayflower and becomes a part of the master lease, one copy is sent to the lessor's agent, and a third accompanies the bill of lading and other shipping papers to Mayflower's accounting department. Mayflower qualifies leased equipment in the States in or through which it is to be operated, unless it is so qualified by the agent. The leased units are assigned to particular hauling operations by a Mayflower dispatcher, and information pertaining to the equipment is kept on a card in Mayflower's files while operating in its service. Under the master lease Mayflower assumes full responsibility as a common carrier for the leased equipment when operated in its service, and Mayflower understands that this responsibility in respect of any particular movement continues until the leased vehicles is returned to the home terminal of the agent. The equipment lease, under which Mayflower leased the owner-operator tractors is similar to the hauling agreement used by North American, except that Mayflower agrees to provide public liability and property damage insurance.

United Van Lines is owned by 107 carrier-agents. It owns approximately 56 complete units, and has available 156 straight trucks, 834 tractors, and 828 trailers owned by 328 agents domiciled in 268 cities throughout the country. Equipment is leased only from the agents who are also authorized to transport household goods in interstate commerce. The agents are required to file public liability and property damage insurance on the leased equipment. The lease agreement making equipment available to United continues in effect until terminated by either party upon 10 days' notice. When equipment is called into United's service, a certificate of trip lease, similar to that used by Mayflower, is executed covering the period required to perform the particular moving operation.

United assumes full responsibility for equipment operated under lease to it. In addition to the insurance provided by the lessor, United provides additional insurance

up to $200,000 for public liability and $100,000 for property damage. A card is carried in the cab of leased vehicles indicating that the equipment, when carrying United's bills of lading and in its service, is under United's operating rights. The drivers are required to file daily reports with United, which contain detailed information in addition to that provided by the driver's daily log. United requires certificates of physical examination of the drivers of all vehicles operated under lease to it, and has inspections made of the leased equipment whenever it is able to do so. Three inspectors are employed, whose duties include inspection of equipment at the terminals of the agents.

United's carrier agents receive 67 percent of the revenue on any shipment transported, as compensation for the use of the equipment. The agents have the option of transporting shipments on their own authority, if within [fol. 77] the scope of their operating rights, or registering it with United for transportation under United's authority. United does not sublease any of its equipment.

All of the nation-wide carriers show that at certain times of the year traffic is unbalanced, and that the use of equipment obtained under lease from agents throughout the country obviates the necessity of owning sufficient equipment to handle seasonal peaks, which equipment would not be used at other times during the year. The testimony of the carriers in this respect was supplemented by testimony of their carrier agents. According to the latter, by making available their equipment to the nation-wide carriers under lease, they are able to keep skilled personnel employed throughout the year and to balance their operations.

As indicated, these nation-wide household goods carriers do not rent equipment under trip leases, or utilize the services of itinerant owner-operators. However, they oppose any regulations that would have the effect of curtailing trip-leasing, apparently on the theory that they might at some future time desire to utilize equipment so obtained.

Two carriers testified in opposition to the position of the nation-wide carriers and their agents respecting trip-leasing. According to a witness who is president of a carrier domiciled in New York City, with authority to operate in 30 States, and vice president of another carrier

located at Chicago, leasing accounts for about 75 percent of the traffic of the household goods carriers, but is resorted to in order to avoid the appearance of unauthorized brokerage, and to overcome the operational limitations imposed by radial operating authorities. Under many of these certificates a carrier may be restricted to a small area around its city of domicile, although it also may be authorized to transport between that area and 10 or more States. This curtails its opportunity of obtaining a return shipment unless it has a lease agreement with one of the carriers having nation-wide operating rights. This witness favored the interchange or diversion of household goods shipments, which practices the Household Goods Carriers' Conference apparently considers impracticable. The witness favored the prohibition of the leasing of equipment by a carrier for single trips beyond its authorized territory, and the restriction of leasing to territory which both the lessor and lessee carrier are authorized to serve.

An independent household goods carrier domiciled at Louisville, having authority to serve 34 States, has conducted operations successfully for more than 45 years without leasing its equipment to the nation-wide carriers and opposes the practice. Its competitors at Louisville are all agents of the nation-wide carriers, and the competition has increased since prior to the war, as the number of agents has increased. The witness contended that the growth of the large national systems has been possible only through their leasing practices, and that their competition is tending to drive the small independent household goods carrier out of business.

[fol. 78] *Leasing vehicles of exempt commodity carriers.* Although the record contains some testimony respecting the utilization of the vehicles of exempt commodity haulers in westbound movements from Chicago and St. Louis, the details are not clear. Most of the evidence dealing with this subject was placed in the record by the regular-route common carriers operating to and from Florida. The situation of a carrier domiciled at Tampa, Fla., is illustrative of this type of leasing. The carrier is engaged in operations over regular routes in Florida and Georgia, principally between Tampa on the south, and Atlanta and Savan-

nah, Ga., on the north. In addition, it conducts extensive intrastate operations in Florida. It utilizes under trip lease the equipment of dealers who engage in private carriage of fruits and vegetables from Florida to the North as well as the equipment of carriers who transport only these commodities, and whose operations are not subject to regulation, except in respect of safety. The carrier owns approximately 300 vehicles which it uses principally in its intrastate operations. In its interstate operations equipment obtained under trip leases from the private carriers of fruits and vegetables and exempt haulers of these commodities accounts for approximately 20 percent of its total vehicle mileage, and a slightly higher percent of its gross revenue. The equipment obtained under trip leases is utilized in its longer hauls, up to 700 miles.

Most of the equipment obtained by this carrier from the exempt commodity haulers is leased for single trips at Atlanta. The equipment of these carriers would otherwise return empty to the South if they are unable to obtain shipments of exempt commodities in the North destined to Florida. The trip leases are said to occur and recur generally with the same operators. Under the Florida law all vehicles used in for-hire operations therein must carry the license plates of that State or of some State with which Florida has reciprocal relations in respect of truck licensing. It is indicated that the cost of these plates in Florida are approximately $575 for an average tractor-trailer line-haul unit.

This carrier does not utilize under trip lease the equipment of itinerant owner-operators. Most of the equipment it rents for single trips is refrigerated or semi-refrigerated for the handling of perishable commodities. The peak of the southbound movement of general commodities to Florida occurs during the winter and coincides with the heaviest northbound movement of perishable commodities. Ownership of sufficient equipment to transport the southbound movement in winter would entail a heavy investment in equipment, which would be idle the remainder of the year. Based on the total distance traveled by its trip-leased equipment in 1947, and the first 9 months of 1948, and its average line-haul expenses of operation, excluding terminal and ad-

ministrative expenses, this carrier estimates that it saved over $188,000 and $150,000, respectively, in these periods.

The lessors of the equipment hired by this carrier under trip lease are paid from 17 to 25 cents a mile. The carrier does not consider it proper to base the compensation for the equipment on a percentage of the revenue earned thereby.

This carrier and other common carriers domiciled in Florida or operating into the State, in order to eliminate what they consider bad practices in connection with the leasing of trucks, have agreed upon a form of written [fol. 79] lease and certain conditions to be met by their lessors of equipment utilized under trip leases. The lease specifies the routes to be followed, requires compliance with our hours of service and safety regulations, and provides for physical examination of the driver, inspection of equipment, and the assumption of full legal responsibility by the lessee carrier. The latter agrees to provide public liability, property damage, and cargo insurance.

The record indicates that the interstate common carriers serving Florida generally do not transport perishable fruits and vegetables northbound, apparently because of the lack of adequate equipment and operating authorities that are restricted either as to routes or territory. Almost 100 percent of this traffic is transported in vehicles of dealers or carriers that specialize in transporting such commodities exclusively and have refrigerated or semi-refrigerated equipment. The Florida agricultural industry is said to be dependent on the service, and we are urged by the Florida Railroad and Public Utilities Commission, and the Florida Citrus Commission, as well as other bodies representing Florida growers and shippers of perishable products, to adopt no regulations that would preclude the use of the equipment of the exempt carriers for the southbound transportation of general commodities under lease. The importance of motor transportation of the perishable exempt commodities from Florida is indicated by the fact that for the 1948 season through December 8, the citrus movement from Florida aggregated almost 22,000 carloads, of which 9,917, or 45.7 percent, were transported in motor vehicles. This represented a substantial increase in the truck move-

ment of these commodities over the previous season. The common carriers domiciled in the north, which have rights to serve Florida, either directly or through interchange, lack equipment to transport the perishable commodities on return trips, and apparently are willing to have a good share of the southbound traffic transported under lease by the exempt carriers in order to avoid empty return movements from the south. Clearly, this is not a healthy condition from the standpoint of regulation. The transportation of general commodities should be performed by authorized carriers.

Coordinated rail-motor and express service. Certain railroads, which have authority, or seek authority to perform motor-truck operations along their rail lines in the transportation of railroad freight between rail stations, perform the service in vehicles leased from others, who also furnish the drivers, under long-term contracts or continuing arrangements. In the proceedings in which certificates for this type of operation were granted, copies of these contracts were considered. Some of the arrangements were subsequently revised. Generally the vehicles are leased from the Railway Express Agency, Inc., of New York City, Columbia Truck Leasing, Inc., of St. Louis, and Motor Express Rentals Corporation of Chicago.

In general the terms of the contracts between the railroads and their lessors are as follows: The lessor is required to furnish competent and qualified drivers of the leased vehicles, which are the employees of the lessor and not the employees of the railroad. The railroad may request removal or discharge of an objectionable driver. Representatives of the railroad prescribe the schedules, routes, records, and methods of handling freight, and only railroad employees deal with the public. The vehicles furnished must meet railroad specifications, and be main- [fol. 80] tained in good working order, and the lessor is required to provide public liability and property damage insurance coverage. The name of the railroad is painted on the vehicles, which must conform to our safety regulations, and to State and Federal laws, and must be operated solely for the purpose of transporting railroad freight, or that which the railroad directs to be transported. The lessor is

required to file accident and hours-of-service reports and to comply with safety regulations.

Agreements for the lease of equipment, with drivers, by railroads from the Railway Express Agency generally provide for compensation on a cost basis, plus interest on investment, with depreciation charges based on mileage. Vehicles are obtained from other lessors with drivers at a uniform rate per mile, whether operated loaded or empty.

The railroads which operate leased equipment in the manner described are opposed to having applied to their motor-vehicle operations any requirement that drivers of leased vehicles be employees of the carrier. They contend that this requirement would increase the cost of their substituted service because of differences in taxes on railroad wages; that their lessors have developed experienced and qualified personnel to operate and maintain the particular types of vehicles required by the railroads and are reluctant to lease the equipment unless accompanied by their own drivers; and that the arrangements give the railroads adequate control over the operations without actually employing the drivers. These railroads seek exemption from the proposed requirement on the ground that we have a continuing and constant control over the substituted motor-for-rail service through conditions attached to the certificates, which reserve the right to impose further conditions and restrictions, and that the railroads have not been shown to have been guilty of any abuses or law violations in utilizing leased motor-vehicle equipment. The Illinois Central Railroad contends that ownership of motor vehicles by railroads is unnecessary to insure financial responsibility. It leases under equipment trusts most of its rail equipment. The Louisville and Nashville Railroad Company owns no vehicles and prefers to lease the few required in its relatively small motor operations.

Both Atlantic Coast Line Railroad Company and the Express Agency contend that their motor operations would be hampered by any rule requiring that exclusive possession be vested in the lessee for the duration of a lease, if the rule were construed to prevent the agency from transporting railroad express traffic in the same vehicles in which railroad traffic is transported. The railroad is obligated to

haul express traffic between its stations, and some such traffic is transported by the Express Agency in over-the-road truck service for the convenience of the railroads. The railroad also contends that it would be an undue burden to require it to give a receipt each time that a truck made a trip.

These carriers suggest that plans for the operation of leased equipment be considered in informal proceedings.

The New York Central Railroad Company contends that the use of leased vehicles in its substituted service is merely auxiliary and supplemental to its operations subject to part I of the act, and that this type of operation repeatedly has been recognized by us as a different type of motor-carrier operation. Reference is made to *Kansas City S. Trans-*
[fol. 81] *port Co., Inc., Com. Car. Application*, 10 M.C.C. 211, *Willett Co. of Ind., Inc., Ext. Fort Wayne—Mackinaw City*, 42 M.C.C. 721, and *Interstate Commerce Commission* v. *Parker*, 326 U. S. 60.

Railroad express traffic is transported for the Express Agency by star route mail carriers, which furnish and drive the vehicles in which express traffic is handled. In *Railway Exp. Agency, Inc., Extension—Waggoner, Ill.*, 44 M.C.C. 771, we found that the Agency would have complete direction and control over the vehicles used, which were furnished by the star route operators; that such vehicles would be operated under the Express Agency's full responsibility to the shipper and the public generally, as a common carrier by motor vehicle. The Agency contends that its operations conducted through star route mail carriers should be exempted.

The Agency also conducts certain express operations in the States of Indiana, California, and Virginia through wholly owned subsidiaries incorporated therein, as required by the laws of these States. The vehicles are furnished by the parent company, a Delaware corporation, and payment by the subsidiaries is on a cost-plus basis. Generally the drivers are employees of the subsidiaries, except in instances where local conditions and union affiliations make it desirable that the drivers be employees of the parent company. These subsidiaries transport express traffic in interstate commerce under the billing of the parent

company and certain traffic under railroad billing. In some instances the vehicles so leased to the subsidiary, but not used by it, are utilized in the local pickup and delivery service of the parent company. All dealings with the public are by the parent company.

As we understand their position herein, most of the railroads, although seeking exemption from any prescribed rules for their motor operations in leased equipment, ask that we apply the principal requirements in the proposed rules of the examiner to operations in leased equipment of non-rail motor carriers.

Private Carriers and Shippers. The members of the Aircraft Industries Association produce approximately 90 percent of all aircraft and aircraft parts in the United States. They lease trucks from authorized carriers because of a need for expedited service which the carriers are unable to provide. If regulations adopted in this proceeding make it too onerous to lease vehicles from regulated for-hire carriers, it is stated that the members of the association will obtain equipment from persons not under our jurisdiction.

United Aircraft Corporation, a member of the association, handled less than 1 percent of its traffic in leased vehicles in 1947. Most of its leases are for a minimum period of 6 months. It provides its own drivers and insurance, and pays operating expenses. It leases equipment in order to obtain a specialized service, which may entail continuous hauling for a 24-hour period. The line-haul vehicles of motor common carriers are best suited for its purpose. Some of the lessors also haul for it as common carriers. It opposes any requirement that leases apply for any specific period.

The Manufacturing Chemists Association was represented by a witness who is an official of Merck & Company, Inc., of Rahway, N. J., a member of the association. Members both ship by motor carrier and also operate motor [fol. 82] vehicles as private carriers. They are opposed to any regulations which would increase the cost of their transportation. The company represented by the witness operates its own trucks and also leases additional vehicles without drivers from authorized carriers for about 10 percent of its private-carrier traffic, generally on a one-way

or round-trip basis. The leased equipment is employed principally for short hauls of less than 75 miles from the main plant. It is unable to obtain vehicles except from authorized carriers, as there are no truck-leasing companies at Rahway.

Economic benefits resulting from leasing practices. The record is persuasive that the principal inducement which has led to an increased use of leased equipment by authorized carriers is the reduction in the capital investment required and the savings in operating costs.

Because of seasonal fluctuations in the movement of many commodities and the unbalanced operations of certain carriers, these carriers would be required to maintain substantial investments in equipment which for part of the year would be idle, except for their ability to lease additional vehicles, as needed, in periods of peak demand. Also their labor costs undoubtedly would be greater. According to data compiled by A.T.A. from the annual reports for 1947 of 867 class-I carriers of general commodities, if such carriers were required to purchase new units to replace leased tractors only, it would cost them approximately $34,000,000. One of the largest carriers in central territory, domiciled at Detroit, estimated that in May 1948, it would have cost $32,360 in empty mileage to transport in its own vehicles traffic transported by its owner-operator lessors. On an annual basis this would amount to $350,000. Estimates by the household goods carriers, having nation-wide operating rights, as to the capital necessary to replace their present leased equipment, if they were required to own all of it, range from several hundred thousand to two million dollars. The investments of none of these carriers in owned equipment, or other facilities devoted to their operations, exceeded $500,000 at the time of the hearing.

[fol. 83] *Interchange.* As previously indicated, interest in interchange is not as widespread as in leasing, although many of the parties advocate the prescription by us of reasonable rules and regulations governing interchange practices. The interchange rule proposed by the examiner would permit the interchange of equipment, solely by common carrier, and only, in connection with the through movement of traffic, and the interchange rule prescribed by Divi-

sion 5 is similarly restricted. The prescribed rule would not, however, as apparently understood by some of the parties, permit only the exchange of loaded vehicles. A group of regular-route common carriers at St. Louis is particularly interested in this matter. They are opposed to any rule which would preclude the exchange of empty for loaded vehicles at an interchange point, and they insist that interchange should not be restricted to two carriers. These carriers operate over regular routes to and from Cincinnati, Louisville, and other cities, as well as St. Louis. In their operations, trailer-loads of traffic from Louisville, destined to Kansas City, Mo., are frequently received at St. Louis and forwarded to Kansas City. The carrier receiving the loaded trailer uses its own tractor to draw the trailer to Kansas City. At the same time, the carrier receiving the loaded trailer turns over an empty trailer to the carrier which has brought the loaded trailer from Louisville. These respondents direct attention to the fact that the interchange rule prescribed by division 5 requires that the agreement providing for interchange be made between the carrier owning the equipment and the carrier proposing to acquire the use thereof in interchange, and stress the fact that in a 3-line movement one of the parties to the interchange, although in lawful possession of interchanged equipment, might not be the owner thereof.

The contract-carrier-respondents ask that interchange be not restricted solely to common carriers. No provision of the act that we are aware of, authorizes the interchange of equipment between contract carriers in the furtherance of a through movement of traffic.

Objection to a requirement that interchange agreements should be restricted to the owner of the equipment and the other carrier, party to the movement, is raised by the automobile transporters. They contend that any such restriction would discourage the interchange of equipment and the through movement of traffic, and would be prejudicial to carriers using leased equipment, if strictly construed. They suggest that in lieu of a requirement that one of the parties to an agreement in respect of interchange shall be the owner of the equipment, it is sufficient to provide that one of such parties should have legal possession of the equip-

ment to be interchanged. This would permit a carrier having possession of a vehicle under a long-term lease to deal with it in interchange as though such carrier owned it.

A group of 60 carriers which specialize in the transportation of heavy machinery, and other articles requiring special equipment, and described as heavy haulers, desire to perform interchange free from any requirement that equipment to and from an interchange point must be operated by a driver who is an employee of the carrier receiving the shipment in interchange. These carriers generally have limited certificates because until recently the type of transportation they perform was concentrated in large industrial areas. The development of hydroelectric projects throughout the country, and the decentralization of industries now [fol. 84] require movements by these carriers for considerable distances, and entail the use of special equipment, such as long, low-body trailers equipped with cranes and winches, which must be operated by highly skilled personnel. These carriers do not utilize the services of itinerant owner-operators. They lease additional equipment, with drivers, when needed, from other heavy haulers. These carriers will not permit a driver that is unfamiliar with their equipment to operate it. They contend that the performance of a through service to points beyond the limits of their operating authorities would not be feasible if transfer of the lading was required. Where movements are initiated by one carrier destined to a point in another carrier's certificated territory, the practice has been for the first carrier to perform the entire movement from origin to destination in its equipment, with its own driver, under a trip lease to the second carrier. A prohibition against trip-leasing between authorized carriers except between points which both are authorized to serve, and a requirement that interchanged equipment must be driven by an employee of the carrier receiving it, would prevent these practices.

Where necessary, carriers of the type here considered may be granted temporary authorities for special movements beyond the scope of their operating authorities. If they are unable to comply with the reasonable rules respecting leasing or interchange prescribed herein, we will,

of course, give consideration to requests for any necessary relief from the rules.

Nature of Rules To Be Prescribed

Alternative remedies suggested by the order instituting the investigation herein are to require the discontinuance of all leasing by authorized carriers or to restrict the use of leased equipment to a fixed percentage of all equipment operated by the lessee carrier. These are drastic remedies, and we conclude that their application is not necessary at this time.

As previously noted, with a few exceptions, in particular the Household Goods Carriers' Conference, and the National Industrial Traffic League, the parties to the proceeding support either the rules proposed by the examiner set forth in appendix B, or those prescribed by division 5, reproduced in appendix A, with some suggested modifications. The cardinal and controversial points in the proposed rules, omitting minor requirements, are that:

1. All leases, except between authorized carriers or in an emergency, must apply for not less than 30 days.
2. Exclusive possession of a leased vehicle for the period of the lease must be vested in the lessee, preclusive of subsequent subleasing.
3. Compensation for the rental of a vehicle obtained under lease based on a division or percentage of the revenue earned thereby, is prohibited.

[fol. 85] 4. Except in the case of equipment (1) leased from another authorized carrier and operated over routes or within territory which the lessor and lessee are authorized to serve, or (2) utilized in the transportation of Railway Express shipments or in substituted motor-for-rail transportation, the driver of a leased vehicle must be an employee of the lessee.

Other requirements of the proposed rules objected to by some of the parties are that leases must be entered into with supervisory employees of a lessee, and that interchange agreements must contain the essentials of valid bi-laterial contracts. One of the proposed rules also required the filing of copies of leases and interchange

agreements with the Bureau of Motor Carriers, and another provided for exemption from the rules in the case of emergencies.

The rules prescribed by division 5 are criticized by the proponents of the proposed rules or similar rules as being too lax, in that they omit a minimum period for the duration of leases, do not prohibit compensations based on a percentage of the revenue earned with the equipment, and do not require the leased equipment to be driven by an employee of the lessee. The Teamsters Union and most of the railroads contend that the described requirements contained in the proposed rules represent the minimum regulations essential to a sound motor transportation system and effective administration of part II of the act.

No serious objections were raised by any party to the proposed exemption of vehicles used in rail or express service. The modus operandi of the motor-vehicle transportation of the railroads and the express agency have been carefully considered and approved in many proceedings. We are urged also, however, to exempt operations conducted in leased equipment under plans specifically approved by us in proceedings arising under section 5 of the act, such as Allied's operations approved in the *Evanston case, supra,* and A.T.A. urges that operations in leased vehicles conducted entirely within municipalities or commercial zone areas also should be exempted from any rules prescribed. There is no evidence of record respecting unlawful practices in operations conducted with leased equipment wholly within commercial zone areas.

In general, the rules suggested by A.T.A. are intended to apply to equipment rented under trip leases. A.T.A. suggests that equipment leased for definite periods, and painted and otherwise identified as though owned by the lessee, be treated as owned equipment, and that any rules prescribed be framed so as not to apply to such equipment. It is suggested that the permanent identification include the carrier's name, its I.C.C. number, and an accounting number of the lessee carrier painted on the vehicle.

Our present requirements for the identification of the vehicles of authorized carriers are prescribed by the order of June 11, 1947, entered in Ex Parte No. MC-41, Identifica-

tion of Motor-Carrier Vehicles. Under this order the carriers are required to display on both sides of a vehicle operated under its own power the name or trade name of the carrier, under whose authority it is operated, and, if other names appear on the vehicle, the name of the [fol. 86] carrier by whom the vehicle is operated must also be shown. In addition, the certificate, permit or docket number assigned to the operating authority by this Commission must be shown. These regulations permit the required identification to be shown by removable devices. If the suggestion of A.T.A. were followed we would, in effect, be approving another set of regulations for identication of motor-vehicle equipment. The regulations we shall prescribe should not preclude the leasing by a carrier of equipment in its lawful possession, whether or not it is the actual owner. Sub-leasing, however, whereby traffic on the billing of more than one carrier is carried on the same vehicle at the same time, raises complex questions of control and responsibility, and should not be permitted.

As indicated, the nation-wide household goods carriers, in addition to Allied, contend that their operations conducted in leased vehicles should either be exempted from any general rules prescribed herein, or should be governed by special rules prescribed in Ex Parte No. MC-19. These carriers do not utilize the equipment of owner-operators under trip lease, and any rule restricting this practice would have no effect on them. According to the Household Goods Carriers' Conference, it would be difficult for its members to comply with most of the prescribed rules, and impossible for them to comply with the rules respecting the giving and obtaining of receipts covering leased equipment, and requiring that inspections of leased equipment be made by responsible and competent regular employees. A lessee might not have an employee located at a point where possession of equipment is taken. Many agents do not own all the equipment which they make available to the national carrier under the master lease.

It would not be possible to prescribe rules that would not require some changes in the present leasing practices of some carriers. As previously noted, the hauling agents of the nation-wide household goods carriers, other than

Allied and Greyvan, generally also have interstate authority, less extensive than that of the national carrier to whom equipment is leased. We deem it necessary to exercise sufficient control over the leasing practices of these carriers to be able to determine that a purported lease of equipment is just that, rather than an arrangement for a lease of operating rights or an extension of the same without our approval. Leases should be entered into between qualified and authorized personnel of the parties thereto, and some definite means of ascertaining when possession of leased equipment is taken and when it is relinquished should be provided. The rules which we shall prescribe herein, in our opinion are necessary, and should not impose too great a burden on the carriers. Only Mayflower, of the nationwide household goods carriers, has given us the benefit of constructive suggestions respecting the rules that should be prescribed, and these suggestions have received appropriate consideration. For the present the rules hereinafter prescribed will permit arrangements under the so-called master leases between the nation-wide household goods carriers and their carrier agents whereby equipment of the latter is called into service at times by the national carriers, and at other times is used in the agents' service. The strict observance by these parties of the provisions of the act and of the rules herein prescribed will obviate any revision of the rules which would preclude such arrangements in the future.

[fol. 87] The evidence as to laxity in inspection of equipment and the checking by prospective lessees of drivers and drivers' qualifications relates preponderantly to equipment leased for a single trip, particularly equipment of the itinerant owner-operator who does not become integrated with the service of an authorized carrier for any definite period. We are aware of no proceeding in which operating rights under the "grandfather" clauses of the act were grounded upon the services of itinerant owner-operators serving one carrier one day and other carrier later. Where their services are utilized under continuing arrangements, however, such as those considered in the "grandfather" proceedings, we see no obstacles to proper administration of the act nor any necessity at present to require the as-

sumption by such owner-operators of the status of employed drivers. We are convinced, however, that trip-leasing, and especially trip leasing of equipment that is operated for the lessee by the owner, or employees of the owner, is inimical to sound regulation and proper administration of the provisions of part II of the act and of our safety regulations. The rules prescribed herein will provide that leases of such equipment apply for a definite period. Some minimum period is necessary to insure proper inspection of equipment and a check of the qualifications of the driver, particularly when the latter is not an employee of the lessee, and we find that a minimum period of 30 days would be reasonable.

In this connection we observe that carriers which conduct operations entirely, or almost entirely in non-owned equipment, and, more particularly, in equipment rented on the basis of a percentage of the revenue earned with the equipment, are in an extremely favorable competitive position as compared with carriers having substantial investments in equipment devoted to for-hire transportation. Moreover, a carrier's inability to provide service except in equipment owned and operated by others raises serious doubts as to its fitness and ability. This is a matter which undoubtedly merits more consideration than it has heretofore received in passing upon applications for operating authority and for extensions of such authority.

The record indicates that equipment leased by shippers from authorized carriers plays a negligible role in the private carriage of their products by the shippers. The act does not restrict private carriage, but it contains no intimation that private carriage should be aided by the authorized carriers through making their equipment without drivers available to shippers under lease. It is one of the anomalies of this proceeding, that certain carriers should augment their equipment used in for-hire transportation under lease, and that other carriers should make available to shippers under lease equipment to assist the latter in their private carriage. Leasing of the latter type can render nugatory many of the regulatory provisions of the act, and may be based on concessions which are proscribed by the Elkins Act. *Charges for Use of Trailers*, 49 M.C.C.

272. The instance heretofore referred to, in which a pipeline contractor leased the equipment of a carrier lacking appropriate authority, and performed a service available by authorized carriers having adequate equipment, aptly illustrates the opportunity for circumventing and evading the regulatory provisions of the act that leasing by carriers to shippers af-ords. In the example referred to, the carrier from whom the equipment was leased, had sought temporary authority to perform the service, which had been denied. Our regulations should be framed so as to minimize the possibilities of such avoidance of regulation. We conclude that leasing of equipment without drivers [fol. 88] by authorized common carriers to shippers should be prohibited.

We further conclude that compensation for the rental of equipment based upon a percentage of the revenue earned with the equipment should be prohibited. This method of compensation leads the carriers which utilize owner-operated equipment to concentrate upon certain profitable traffic to the exclusion of other traffic. It certainly distorts the operating statistics of carriers which depend to a large extent upon equipment leased on that basis. We are persuaded also that it plays a large part in the practice of carriers which have extensive operating rights, but are unable or unwilling to provide service thereunder, of leasing such rights to others under the guise of equipment leases.

For the present we shall not require that leases by authorized carriers of the equipment of carriers of exempt commodities, that is subject to our safety regulations, when utilized solely in return movements, apply for the prescribed minimum period. It seems appropriate to afford the parties some time in which to make the adjustments that a complete prohibition of trip-leasing may render necessary. In permitting this temporary exemption we have given consideration also to the importance of such trip-leasing at the present time to certain areas of the country. We conclude, however, that from the standpoint of our regulation, it stands upon no better footing than the trip-leasing of owner-operator equipment, and must be terminated within a reasonable period. We conclude that six months will be a reasonable period.

Ultimate Findings

We find, upon consideration of all the evidence of record, that evasions and violations of the provisions of part II of the act, and of our regulations prescribed thereunder, occur in the present practices of motor common and contract carriers of property that are subject to such provisions in augmenting their motor-vehicle equipment other than by purchase, and in interchanging equipment; that it is necessary in order properly to administer, execute and enforce such provisions and the regulations thereunder, that reasonable rules and regulations be prescribed governing the lease and interchange of such equipment by such carriers; and that the rules and regulations set forth in appendix E hereto are, and for the future will be reasonable, and should be prescribed for observance by such carriers. The findings in the prior report of division 5 are modified accordingly. An appropriate order prescribing for the future the reasonable rules and regulations set forth in appendix E to the report will be entered.

Commissioners Rogers, Mitchell, and Knudson did not participate in the disposition of this proceeding.

[fol. 89] Lee, *Commissioner*, concurring in part:

In the prior report herein Division 5 prescribed reasonable rules governing the lease and interchange of motor vehicle equipment which would require, among other things, that all contracts, leases, or other arrangements under which equipment owned by other persons is utilized by authorized carriers shall be in writing; that by actual and detailed inspection the authorized carriers shall make certain, before taking possession thereof, that all equipment which they obtain from other persons by contract, lease or other arrangement is in safe operating condition as required by our safety regulations; that all such equipment shall be properly identified by the authorized carriers; that the authorized carriers shall make certain that the drivers of all such equipment are qualified under and familiar with our safety regulations; and that the authorized carriers shall make and preserve records of all equipment used by them under contract, lease, or other arrangement. These rules were designed, after most careful considera-

tion of the record, to correct the abuses found to exist in the use by authorized carriers of equipment owned by other persons without abruptly disrupting the lawful operations of any carriers.

In 1935, when motor carriers were subjected to federal regulation, a substantial part of the interstate transportation of property by motor vehicle was physically performed by persons who came to be known as owner-operators. Unfortunately, the act failed to grant them even limited operating rights and to subject them to regulation with respect to safety of their operations and equipment. The act did not, however, prohibit them from continuing their physical operations under leases with authorized carriers or as independent contractors performing service for such carriers. In the development of motor carrier service over the years owner-operators have played an important part and have served a useful function. They have provided, and they still provide, a pool of motor vehicle equipment without which motor carrier service frequently would fail to meet peak period demands of the public. It appears from the evidence of record that the majority of the owner-operators and authorized carriers which utilize owner-operators are not guilty of the abuses which the prescribed rules are designed to eliminate. The situation is similar with respect to equipment of private carriers and to that operated under section 203(b)(6) of the act. For practical reasons a large part of the available owner-operator, private carrier, and section 203(b)(6) exempt equipment can be utilized by authorized carriers only under trip leases.

I believe that, before prohibiting such trip leasing, the rules prescribed by Division 5 should be given a practical test of their effectiveness in correcting the abuses which led to the institution of this investigation. In any event the effective date of the rule, which prohibits trip-leasing, should be postponed for at least a year to afford authorized carriers, owner-operators, private carriers, and persons operating under section 203(b)(6) an opportunity to adjust their practices without disruption of present services. Under existing conditions of extraordinary need for transportation facilities we should not prescribe any regulations

which will curtail the maximum utilization of available equipment unless the law leaves us no other alternative. [fol. 90] The bona fide leasing to noncarriers by authorized carriers of equipment, without providing drivers therefor, is not shown to be contrary to any provision of the act and should not be condemned.

[fol. 91] APPENDIX A TO APPENDIX "A"

Rules Prescribed by Division 5 In Prior Report, 51 M.C.C. 461

Rule 1—*Definitions.*

(a). *Authorized carrier.* A person or persons authorized to engage in transportation of property as a common or contract carrier under the provisions of Sections 206, 207, or 209 of the Interstate Commerce Act.

(b). *Equipment.* A motor vehicle, straight truck, tractor, semi-trailer, full trailer, combination tractor-and-semi-trailer, combination straight truck and full trailer, and any other type of equipment used by authorized carriers in the transportation of property for hire.

(c). *Interchange of equipment.* The physical exchange of equipment between authorized carriers at a point which both carriers are authorized to serve.

(d). *Regular employee.* A person not merely an agent but regularly in exclusive full-time employment.

(e). *Agent.* A person other than a regular employee duly authorized to act for and on behalf of an authorized carrier.

(f). *Non-carrier.* A person other than an authorized carrier.

Rule 2—*Augmenting equipment.* Other than equipment utilized in interchange service, as defined in Rule 3 of these regulations, authorized carriers may perform au-

thorized transportation in or with equipment which they do not own only under the following conditions:

(a). The contract, lease, or other arrangement for the use of such equipment—

(1). Shall be made between the authorized carrier and the owner of the equipment;

(2). Shall be in writing and signed by the parties thereto, or their regular employees or agents duly authorized to act for them;

(3). Shall provide for the exclusive possession, control, and use of the equipment by the authorized carrier when operated by or for such carrier and for the complete assumption on the part of such authorized carrier of full responsibility in respect of said equipment during the period the equipment is operated in its service, to the public, the shippers, and the Interstate Commerce Commission;

[fol. 92] (4). Shall specify the time and date the contract, lease, or other arrangement begins, and the time or the circumstances on which it ends, and the method of determining the compensation for the use of the equipment. The duration of the contract, lease, or other arrangement shall coincide with the time for the giving and receiving of receipts for the equipment as required by Rule 2-b of these rules; and

(5). Shall be executed in triplicate; the original shall be retained by the authorized carrier, one copy shall be retained by the owner of the equipment, and one copy shall be carried on the equipment specified therein during the entire period of the contract, lease, or other arrangement, unless a certificate as provided in Rule 2-d (3), is carried in lieu thereof.

(b). *Receipts.* When possession of the equipment is taken by the authorized carrier or its regular employee or agent duly authorized to act for its said carrier, employee, or agent shall give to the owner of the equipment or the owner's employee or agent a receipt specifically identifying the equipment and stating the date and the time of day possession thereof is taken; and when the possession by the

authorized carrier ends, it or its employee or agent shall obtain from the owner of the equipment or its regular employee or agent duly authorized to act for it a receipt specifically identifying the equipment, and stating therein the date and the time of day possession thereof is taken.

(c). *Inspection of equipment.* It shall be the duty of the authorized carrier, before taking possession of equipment, to inspect the same or to have the same inspected by one of its responsible and competent regular employees in order to insure that the said equipment complies with Parts 3 and 6 of the Motor Carrier Safety Regulations (Rev.), pertaining to "Parts and Accessories Necessary for Safe Operation", and "Inspection and Maintenance", and if explosives or other dangerous articles are to be transported thereon, further to inspect and check such vehicles or equipment to insure that they or it complies with Part 7 of the said safety regulations pertaining to "safe transportation of explosives". The person making the inspection shall certify the results thereof on a report in the form hereinafter set forth, which report shall be retained and preserved by the authorized carrier, and if his inspection disclosed that the equipment does not comply with the requirements of the said safety regulations, possession thereof shall not be taken. In all instances in which the inspection required by this rule is made by an employee, the authorized carrier, if an individual, or a member of the copartnership if the authorized carrier is a copartnership, or one of the officials thereof if the authorized carrier is a corporation, shall certify on the inspection report that the [fol. 9"] employee who made the inspection is a responsible and competent employee:

(Note: The form for the report of inspection, also included in Appendix E hereto, is omitted at this point.)

(d). *Identification of equipment.* The authorized carrier acquiring the use of equipment under this rule shall properly and correctly identify such equipment as operated by it when such equipment is operated by or for such carrier, the period of the lease, contract or other arrangement, in accordance with the Commission's requirements in Ex Parte No. MC-41. If a removable device is used to identify

the authorized carrier as the operating carrier, such device shall be on durable material such as wood, plastic, or metal, and bear a serial number in the authorized carrier's own series so as to keep proper record of each of the identification devices in use.

(1). The authorized carrier operating equipment under these rules shall remove any legend, showing it as the operating carrier, displayed on such equipment, and shall remove any removable device showing it as the operating carrier, before relinquishing possession of the equipment.

(2). Unless a copy of the lease, contract, or other arrangement is carried on the equipment, as provided in Rule 2-a (6) of these rules, the authorized carrier or his regular employee or agent shall prepare a statement certifying that the equipment is being operated by it, which shall specify the name of the owner, the date of the lease, contract, or other arrangement, the period thereof, and any restrictions therein relative to the commodities to be transported which certificate shall be carried with the equipment at all times during the entire period of the lease, contract, or other arrangement.

(e). *Driver of equipment.* Before any person other than a regular employee of the authorized carrier is assigned to drive equipment operated under these rules, it shall be the duty of the authorized carrier to make certain that such driver is familiar with and that his employment as a driver will not result in violation of any provision of Parts 2, 3, 5, and 6 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Driving of Motor Vehicles", "Parts and Accessories Necessary for Safe Operation", "Hours of Service of Drivers", and "Inspection and Maintenance", and to require such driver to furnish a certificate of physical examination in accordance with Part 1 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Qualifications of Drivers", or, in lieu thereof, a photostatic copy of the original certificate of physical examination, which shall be retained in the authorized carrier's file.

(f). *Record of use of equipment.* The authorized carrier

utilizing equipment operated under these rules shall prepare and keep a manifest covering each trip for which the equipment is used in its service, containing the name and address of the owner of such equipment, the make, model, [fol. 94] year, serial number, and the State registration number of the equipment, and the name and address of the driver operating the equipment, point of origin, the time and date of departure, the point of final destination, and the authorized carrier's serial number of any identification device affixed to the equipment. During the time that equipment subject to these rules is operated there shall be carried with the equipment, bills of lading, waybills, freight bills, manifests, or other papers identifying the lading, which shall clearly indicate that the transportation of the property carried is under the responsibility of the authorized carrier, which papers, together with the truck manifest, shall be preserved by the authorized carrier.

Rule 3—*Interchange of equipment.* Common carriers of property may by agreement, contract, or lease, interchange any equipment defined in Rule 1-b of these rules with other common carriers of property in connection with any through movement of traffic under the following conditions:

(a). *Agreement providing for interchange.* The contract, lease, or other arrangement shall be made between the carrier which owns the equipment and the carrier proposing to acquire the use thereof; shall specifically describe the equipment to be interchanged, the specific points of interchange, and the use to be made of equipment by the carrier which is not the owner thereof while in its possession; shall state the consideration for the use of the equipment; and shall be signed by the parties to the contract, lease, or agreement, or their regular employees or agents duly authorized to act for them.

(b). *Authority of carriers participating in interchange.* The certificates of public convenience and necessity held by the carriers participating in the interchange arrangement must authorize the transportation of the commodities proposed to be transported in the through movement, and service from and to the point where the physical interchange occurs.

(c). *Driver of interchanged equipment.* Each carrier must assign its own driver to operate the equipment that is proposed to be operated from and to the point of interchange and over the route or routes authorized in the participating carriers' respective certificates of public convenience and necessity.

(d). *Through bills of lading.* The interlined traffic transported must move on through bills of lading issued by the originating carrier, and the rates charged and revenues collected must be accounted for in the same manner as if there had been no interchange of equipment. Charges for the use of the equipment shall be kept separate and distinct from divisions of the joint rates or the proportions accruing to the carriers by the application of local or proportional rates.

[fol. 95] (e). *Inspection of equipment.* It shall be the duty of the carrier acquiring the use of equipment in interchange to inspect such equipment, or to have it inspected by one of its responsible and competent employees for the purpose specified in Rule 2-c of these rules and equipment which does not meet the requirements of the safety regulations shall not be operated in the respective services of the interchange carriers until the defects have been corrected.

Rule 4—*Rental of equipment to private carriers and shippers.*

(a). *Renting equipment with drivers.* Unless such service is specified in their operating authorities; authorized carriers are prohibited from renting equipment with drivers to non-carriers and shall not directly or indirectly assist such non-carriers to select or obtain drivers for equipment rented to them.

(b). *Removal of identification.* Before the effective date of the lease, contract, or agreement for rental of equipment to non-carriers without drivers the authorized carrier shall cause to be removed from the equipment all marks of identification that indicate that such equipment is utilized in its operation, which marks shall not be restored until the termination of the agreement.

Rule 5—*Modification of or exemption from rules.* Any of these rules may be modified, or any carrier may be granted exemption from any rule or rules, in the discretion of the Commission, and upon good cause shown, under the following conditions:

(a). *Application for modification or exemption.* Application for modification of or exemption from a rule shall be made in writing, addressed to the Interstate Commerce Commission, Washington, D. C., and signed by the carrier seeking the modification or exemption, or regular employee or agent duly authorized to act for him, and shall specify the rule sought to be modified, or the rule from which exemption is sought, and the reasons therefor.

(b). *Notice of filing application.* A copy of such application shall be sent by the applicant to its competitors known to it, through the United States mails, and certification of such mailing shall be made by the applicant and attached to the application filed with the Commission.

(c). *Reply to application for modification or exemption.* Competitors of the applicant shall have 15 days from the date of such notice in which to file replies to said application why the application should not be granted.

[fol. 96] APPENDIX B TO APPENDIX "A"

Leasing and Interchange Rules Proposed by the Examiner

Rule I—*Definitions.*

a. *Authorized carrier.* A person or persons authorized by the Interstate Commerce Commission to engage in transportation of property as common or contract carriers under the provisions of Sections 206, 207, 208 or 209 of Part II of the Interstate Commerce Act.

b. *Equipment.* A motor vehicle, straight truck, tractor, semi-trailer, full trailer, or combination tractor or semi-trailer and combination straight truck and full trailer.

c. *Interchange of equipment.* The physical exchange of equipment between authorized carriers at a point which both carriers are authorized to serve.

d. *Regular employee.* A person not an agent but regularly and in exclusive full-time employment.

e. *Non-carrier.* A person other than an authorized carrier.

f. *Own.* A carrier will be considered to own equipment only if the equipment is licensed and registered under State laws in the name of the carrier or of a wholly owned subsidiary of the carrier.

Rule II—*Augmenting equipment.* Authorized carriers may perform authorized transportation in vehicles to which they do not hold title only under the conditions specified in this rule, except that vehicles and equipment rented or leased from another authorized carrier may be utilized in interchange service only as provided in Rule IV of these regulations.

a. The contract, lease, or other arrangement for the use of equipment under this rule—

(1). Shall be made direct between the owner of the equipment or some person in his regular employ in a supervisory capacity, on the one hand, and the authorized carrier, one of its executives, or a regularly employed supervisor- employee of such authorized carrier, on the other hand;

(2). Shall be in writing and signed by the maker, except in an emergency, as defined in Rule III;

(3). Shall apply for a period of not less than 30 days, unless entered into between authorized carriers, or in an emergency, as defined in Rule III hereof;

(4). Shall provide for the exclusive possession, control, and use of the equipment during the full period of the lease, and for the complete assumption on the part of the lessee of full responsibility in respect of said equipment during the period of the lease to the public, the shipper, and the Interstate Commerce Commission, and shall not permit the subletting or subleasing of the equipment in whole or in part, or permit the use of the

equipment for the transportation of property of the lawful owner thereof, or property which is in the custody or control of the lawful owner of the equipment as the agent of shippers; and

(5). Shall specify the time and date the agreement, contract or lease begins and the time or the circumstance on which it ends, together with a written endorsement of each party to such agreement, contract, or lease (which shall be the time for the giving of [fol. 97] receipts for the equipment as required by Rule II-b;

(6). Shall be executed in quadruplicate; the original shall be retained by the lessee, one copy shall be retained by the lessor; one copy shall be filed with the Bureau of Motor Carriers of the Interstate Commerce Commission, and one copy shall be carried on the equipment specified therein, during the entire period of the contract, lease, or other arrangement.

b. The authorized carrier or its regularly employed supervisory employee shall, at the time it takes possession, give to the owner or its agent, a receipt specifically identifying the equipment; and, at the time its possession ends, shall obtain from the owner or its agent, a receipt delivered to the authorized carrier or its regularly employed supervisory employee.

c. Compensation for the use of the equipment shall not be computed on the basis of any division or percentage of any applicable rate or rates on any commodity or commodities transported in said vehicle during the period of the lease.

d. It shall be the duty of the authorized carrier, before taking possession of leased equipment in accordance with Rule II-b, to have the same inspected by one of its responsible and competent supervisory employees, in order to insure that said equipment complies with Parts II and VI of the Motor Carrier Safety Regulations (Rev.), pertaining to "Parts and accessories necessary for safe operation" and "Inspection and maintenance", and if explosives or other dangerous articles are to be transported thereon, further to inspect and check such vehicles or equipment to insure

that it complies with Part VII of the safety regulations pertaining to "Safe transportation of explosives". The employee making said inspection shall certify the results thereof on the lease or contract providing for the use of the equipment, and if his inspection discloses that the equipment proposed to be rented or leased does not comply with the safety regulation requirement, possession thereof shall not be taken.

e. The authorized carrier acquiring the use of equipment under this rule shall property and correctly identify such equipment as operated by it during the period of the contract, lease, or other arrangement, in accordance with the Commission's requirements and in the following manner:

(1). There shall be displayed on the sides thereof the following legend: "Operated Under Lease By —" followed by the name of the operating carrier; and if a removable devise is used to display this legend and to identify the lessee carrier as the operating carrier, such device shall be on durable material, such as wood, plastic, or steel, and bear a serial number in the lessee carrier's own series so as to keep proper record of each of the identification devices in use on the rented equipment.

(2). A record of the affixing of the legend referred to in Rule II-e(1), or the attaching of the removable device shall be maintained at the lessee carrier's terminal, [fol. 98] which shall include the serial number of the device affixed or attached to the rented equipment, the date placed thereon, the name and address of the lawful owner of the equipment, the State registration number of the equipment on which the legend is displayed, or the removable device attached, and the date the same was removed by the lessee carrier.

(3). The authorized carrier operating leased or rented equipment under these rules shall obliterate any legend showing it as the operating carrier displayed on such equipment, and shall remove any removable device showing it as the operating carrier, upon relinquishing possession of the equipment in accordance with Rule II-b, and before final settlement for the rental charges is made.

f. The authorized carrier utilizing equipment leased or rented under these rules shall prepare and preserve for one year a truck or load manifest covering each load or trip for which the equipment is used in its service containing the name and address of the lawful operator of the equipment; the state registration number of the equipment; the name and address of the driver operating the equipment; the description and weight of the commodities transported therein; the point or place of origin and time and date of departure; the point and place of final destination and the time and date of arrival; and the carrier's serial number of the identification device affixed to the equipment.

g. Except where equipment operated under this rule is, (1) leased or rented from another authorized carrier and operated between points over the route or routes, or within the territory such other authorized carrier is authorized to serve, or (2) is utilized in the transportation of railway express traffic, or in substituted motor-for-rail transportation of railroad freight moving between railroad stations on railroad billing; the person assigned to drive such equipment shall be an employee of the lessee carrier, and his wages shall be kept separate and distinct from any charges made for the use of the equipment and shall not be made part of the terms or conditions of the contract, lease, or other arrangement covering the use of the equipment.

h. The authorized carrier acquiring use of equipment under this rule shall retain in its files for not less than two years after the termination of the arrangement for the use of the equipment the original copy of the written agreement, contract, or lease.

Rule III—*Emergency.* An authorized carrier may, in an emergency, as defined herein, and over routes, within territory and in respect of commodities specified in its certificate or permit, utilize equipment it does not own, with or without drivers, only for the period of the emergency, without compliance with the provisions of Rule II of these rules, provided:

a. Such authorized carrier, immediately upon termination of the emergency, shall relinquish the equipment so utilized, and write to the Bureau of Motor Carriers,

Interstate Commerce Commission, a full description of the circumstances considered as meeting the defini-
[fol. 99] tion of an emergency as defined herein, the reason why equipment could not be rented or leased in conformity with Rule II, the name or names of the owner or owners of such equipment, a complete description thereof, including serial numbers and State license numbers, and the name or names of the driver or drivers of equipment so utilized; and

b. An emergency exists, which, as used herein, means:

> Any situation in which the property of a shipper or shippers is in imminent danger of immediate loss or destruction by any means not within the control of the shipper or shippers, and other adequate transportation than that of the authorized carrier which augments its equipment under this rule, is not immediately available.

Rule IV—*Interchange of equipment.* Common carriers of property may by agreement, contract, or lease interchange any equipment defined in Rule 1-b hereof, except tractors, unless the tractors are used in combination with other equipment described in said rule, with other authorized common carriers of property, for the purpose of facilitating the movement of through traffic, under the following conditions:

a. The contract, lease, or other arrangement for the use of the equipment must be made direct by the carrier which owns the equipment and another carrier proposing to acquire the use thereof, or by executives of such carriers, or persons in their regular employ in supervisory capacities, provided that the arrangement shall not permit the sub-letting or sub-leasing of the equipment in whole or in part.

b. The certificates held by the carriers participating in the interchange arrangement must authorize the transportation of the commodities proposed to be transported in the through movement, and service from and to the point where the physical interchange occurs.

c. Each carrier must assign its own driver to operate the equipment that is proposed to be operated from and

to the point of interchange and over the route or routes authorized in the participating carriers' respective certificates.

d. The traffic transported by each of said carriers must move on through bills of lading issued by the originating carrier, and the rates charged and revenues collected must be accounted for in the same manner as if there had been no interchange of equipment and in the manner prescribed by the Commission. Rental charges for the use of the equipment shall be kept separate and distinct from divisions of the joint rates or the proportions accruing to the carriers by the application of local or proportional rates.

e. It shall be the duty of the carrier acquiring the use of equipment in interchange to have the same inspected in the manner provided in Rule II-d of these rules by a responsible supervisory employee and equipment which does not meet the safety regulation requirements shall not be operated in the respective services of the interchanged carriers until the defects have been corrected.

[fol. 100] f. Any agreement, contract, or lease covering interchanged equipment shall be in writing; shall describe the service to be performed by the parties thereto, and the equipment and specific points of interchange; shall meet the essentials of a valid bilateral contract between the parties, and a copy thereof shall be filed with the Bureau of Motor Carriers, Interstate Commerce Commission.

Rule V—*Rental of motor vehicles and equipment to private carriers and shippers.*

a. Unless such service is specified in their operating authorities, authorized carriers are prohibited from renting equipment to non-carriers with drivers, and shall not directly or indirectly assist such non-carriers to select or obtain drivers for equipment rented to them.

b. A copy of any lease, contract or agreement between any authorized carrier and non-carrier, providing for rental of equipment of the former without drivers to

the latter shall be transmitted to the Bureau of Motor Carriers, Interstate Commerce Commission, and a copy carried with the rented equipment during the period of the lease, contract or agreement.

c. Before the effective date of the lease, contract or agreement for rental of equipment to non-carriers without drivers, becomes effective, the authorized carrier shall cause to be removed from the equipment all marks of identification that indicate that such equipment is utilized in its operation, which marks shall not be restored until the termination of the agreement.

d. Any non-carrier taking possession of equipment without drivers from an authorized carrier under this Rule shall have the same inspected in the same manner as required of authorized carriers taking possession of leased equipment under Rule II-d of these rules.

[fol. 101] APPENDIX C—TO APPENDIX "A"

Rules governing leasing and interchange of motor-vehicle equipment suggested by American Trucking Associations, Inc.

Rule 1

Definitions

a. Authorized Carrier. A person or persons authorized by the Interstate Commerce Commission to engage in transportation of property as common or contract carriers under the provisions of Sections 206, 207, 208, or 209 of Part II of the Interstate Commerce Act.

b. Equipment. A motor vehicle, straight truck, tractor, semi-trailer, full-trailer, or a combination tractor and semi-trailer and combination straight truck and full trailer.

c. Interchange of Equipment. The physical exchange of equipment between authorized carriers at a point which both carriers are authorized to serve.

d. Non-Carrier. A person other than an authorized carrier.

e. Hauling Agreement. A contract under which an owner-operator or an owner-driver furnishes equipment and driver to an authorized carrier.

Rule 2

Augmenting Equipment

Authorized carriers may perform authorized transportation in vehicles to which they do not hold title only under the conditions specified in this rule, except that equipment of another authorized carrier may be utilized in interchange service as provided in Rule 3 of these regulations.

a. Contract, lease, or hauling agreement for the use of equipment under this rule—

(1) Shall be in writing and signed by competent, authorized employees or agents of both parties or the principals themselves.

(2) Shall specify the date and place of execution; the identity of the parties, including their status under the Commission, if any; addresses of both parties; description of the vehicle or vehicles, including make, model, serial number, engine number, (if any) and state registration; effective date, and provision for termination.

(3) Shall contain a compensation clause.

[fol. 102] (4) Shall provide for acceptance by the Lessee of all legal responsibility to the Commission and to the public.

(5) Shall contain a statement to the effect that no other agreement between the parties shall have the effect of nullifying its provisions in whole or in part.

(6) Shall be retained in the authorized carrier's files for not less than one year after termination.

b. Vehicles acquired by a lease or hauling agreement shall not be used in the service of more than one Lessee at any one time, but may be leased to more than one carrier as long as no more than one carrier is entitled to possession and use thereof at the same time.

c. It shall be the duty of the authorized carrier; before taking possession of equipment in accordance with Rule

2(b), to require a responsible and competent regular employee to inspect the equipment proposed to be used under this rule to insure that it complies with Parts 3 and 6 of the motor Carrier Safety Regulations (Revised) pertaining to "Parts and accessories necessary for safe operations" and Inspections and Maintenance" and if it is propsed to transport explosives or other dangerous articles, further to inspect and check such vehicles or equipment to insure that it complies with Part 7 of the Safety Regulations pertaining to "Safe Transportation of Explosives." If it is found that the equipment proposed to be rented does not comply with the safety regulation requirements, possession shall not be taken.

d. A leased vehicle may be permanently identified by painting thereon the name, ICC number and an accounting number of the lessee carrier; when so identified, and provided no inconsistent identification shall appear on the vehicle, the provisions of paragraphs e, f, and g shall not apply.

e. The authorized carrier acquiring the use of equipment not identified in accordance with paragraph (d) shall properly and correctly identify such equipment as operated by it during the period of the contract, lease, or other arrangement in accordance with the Commission's requirements and in the following manner:

(1) There shall be fixed thereon a removable device properly identifying the authorized carrier as the operating carrier; such device shall be on durable material, such as wood, plastic, or steel, and bear a serial number so as to keep proper record of each of the identification devices in use on rented equipment.

[fol. 103] (2) Proper record of the affixing of the removable device shall be maintained at the authorized carrier's terminal and shall show the serial number of the device that is affixed to the rented equipment, the date affixed, the name and address of the lawful owner of the equipment, the State registration number of the equipment to which device is affixed, and the date the device was removed by the authorized carrier.

(3) The authorized carrier shall remove the device upon relinquishing possession in accordance with Rule 2(b), and before final settlement for the rental charges is made.

(4) When leased vehicles are coupled together in combination such as tractor and semi-trailer or truck and trailer, only the power unit need be placarded in accordance with paragraph e.

f. Whenever equipment is operated under Rule 2(e) there shall be carried on the vehicle during the entire term of the lease Bills of Lading, Way Bills, Freight Bills, Manifests, or other papers identifying the lading in the vehicle which shall clearly indicate that the transportation of the property is taking place under the responsibility of the carrier whose identifying device is attached to the vehicle.

g. Whenever a leased vehicle is being operated under Rule 2(e) there shall be carried on the vehicle during the entire term of the lease, either a copy of the lease or in lieu thereof a certificate signed by a responsible, competent supervisory employe of the lessee carrier, showing that the vehicle was inspected before any service was performed under the agreement and was found to be in compliance with the Safety Requirements of the Commission; and that the files of the carrier contain proper evidence as to compliance with the Safety Rules and Regulations of the Commission with regard to hours of service and physical examination of the driver of the vehicle.

Rule 3

Interchange of Equipment

Two or more carriers may interchange equipment to accomplish the through movement of the lading and the return of the vehicle to the originating carrier in accordance with a plan which the parties have reduced to writing and filed with the Commission. This plan shall be consistent with authority granted by the Commission or pursuant to the permission granted to common carriers in Section 216(c) of the Act.

[fol. 104] When such a plan is in existence and on file with the Commission, any carrier, lawfully a party to such plan, shall observe the following rules and conditions when operating the equipment of another carrier, lawfully a party to the plan, over its routes:

a. Where power units are interchanged there shall be affixed to the vehicle a removable device made of durable material, such as wood, plastic, or metal, properly identifying the carrier over whose routes and in whose service the vehicle is being operated after the interchange. These devices shall be serially numbered and a record kept in the office of the carrier as to the usage of each such device. The device must be removed by the carrier before the vehicle is interchanged with another carrier party to the plan.

b. There shall not be on the power unit the identifying device of more than one carrier at any one time.

c. When proper identifying information is on the power unit, a trailer or semi-trailer coupled in combinations with the power unit shall not be required to carry any such identifying device.

d. There shall be carried on the vehicle or combination of vehicles a certificate, signed by the carrier in whose service and over whose routes the vehicle is being operated, stating that the operation is taking place in accordance with a plan which has been filed with the Commission.

e. The Billing shall be carried on the vehicle and shall be in consonance with the carrier over whose routes and in whose service the vehicle is being operated.

f. Interchange plans shall include:

(1) Date and place of execution.

(2) Identity of the parties including their status with the Commission.

(3) Addresses of the parties.

(4) Description of general operation of the plan.

(5) Place or places at which interchange will take place.

(6) Compensation clause, which shall provide that any rental charge for equipment shall be separate and distinct from the divisions of rates and charges.

(7) Effective date.

(8) Acceptance of responsibility to the Commission and to the general public by the parties to the plan for the operation of vehicles under the plan while on their routes or in their service.

[fol. 105] (9) Signatures by competent authorized representatives of the carrier parties to the plan.

(10) The method of billing to be used so that the billing will be in consonance with the carrier over whose routes and in whose service the vehicle is being operated.

(11) The method and procedure which the carrier parties will use under the plan in the matter of equipment inspections to insure compliance with the Safety Rules of the Commission.

Rule 4

Rental of Motor Vehicles and Equipment To or From Shippers

If an authorized carrier at any time hauls property, or performs services for a shipper to whom or from whom the authorized carrier leases one or more vehicles, a letter shall be sent to the Commission describing the circumstances, conditions, and compensation surrounding the transaction, unless the tariffs or the schedules of the carrier provide a specific rate for this type of service.

Exemptions

Rule 5

The provisions of these regulations shall not apply to operation of equipment by any carrier in accordance with a plan heretofore submitted by such carrier in a formal proceeding and specifically approved by the Commission.

Rule 6

The provisions of these regulations shall not apply to the operation of equipment wholly within a commercial zone by any carrier.

Rule 7

Application may be made by any carrier or group of carriers to the Director of the district in which operations involved will be conducted, or to the Director of the Bureau of Motor Carriers, Interstate Commerce Commission, for authority to depart from these regulations in whole or in part.

The officers designated are hereby authorized to grant special permission for departure from these regulations to the extent that they may determine such departure is justified by the facts and circumstances presented in support of the application, subject to the following:

a. In emergencies, relief may be granted for a period of not more than thirty days on application made orally in person or by telephone, or in writing, subject only to the proviso that applicant shall notify known competitors of grounds for the application and the action taken within 10 days after permission for departure is authorized. [fol. 106] b. Permanent relief may be granted on written application, subject to review by the Commission, provided applicant shall:

(1) Notify known competitors by serving on them notice of the application; and

(2) Make adequate provision for protection against abuse of the permission granted.

c. In the case of applications for permanent relief, either an applicant or a protestant may appeal the decision of the officer acting on the matter by a formal petition to the Commission for review.

d. Decisions rendered by officers on applications for permanent relief shall be in writing, and shall contain a full statement of the grounds upon which the decision is based.

[fol. 107] APPENDIX D TO APPENDIX "A"

Summary of conditions reported by field staff of the Bureau of Motor Carriers, based on an informal investigation early in 1948.

General. The practice of hiring motor vehicles of others seems to be generally engaged in by all types of carriers. The sources from which vehicles are hired are other for-hire carriers, exempt carriers, intrastate carriers, private carriers, and non-carriers, including owner operators and truck rental companies.

Some carriers own no equipment and depend entirely upon other persons to supply the vehicles for the transportation which they are authorized to perform. Other motor carriers utilize equipment which they do not own in parts of their operations, over certain routes, during certain periods, or for the transportation of certain commodities.

In the operations of many carriers, there are periods when an abnormal amount of equipment is required to meet the demand for service. If these carriers do not own equipment adequate to meet the peak demand, they use leased equipment; and if they do own sufficient equipment, they then become lessors of excess equipment during off-peak periods. Examples of these are carriers which serve resort areas, seasonal industries, and certain agricultural communities.

In certain sections of the country the movement of tonnage by authorized carriers into the area is much greater than that which flows out. For instance, regular route carriers of general freight domiciled in Florida have unbalanced operations. That is, southbound tonnage is much greater than northbound tonnage. On the other hand, fruit and vegetable trucks move from Florida to northern and eastern cities and cannot afford to return to Florida empty. The authorized carriers lease the vehicles of fruit and vegetable haulers on the return movement to Florida.

Control, direction, and domination of transportation service. The control, direction, and domination which carriers exercise over the performance of transportation service in which hired vehicles are used is generally less than that exercised over company-owned vehicles. This condition is brought about as a result of the informality of the hiring arrangements, insufficiency of control over the operation of the vehicles and of the operators, the loss of

contacts with shippers, and the attempts of authorized carriers to avoid or shift their responsibilities to others.

Informality of arrangements. Arrangements for the use of equipment are frequently made over the telephone, without any inspection of the vehicle by the lessee to insure compliance with safety regulation requirements or any check as to whether the driver is qualified to operate the vehicle.

Lease arrangements are not always concluded before the transportation takes place. Sometimes owner-operators pick up loads first and then shop around for a carrier which will issue billing under the most desirable arrange-
[fol. 108] ment. These operators frequently haul on a carrier's billing without its knowledge and keep all of the revenue.

Some carriers make a regular practice of supplying other carriers and operators of equipment with lease forms signed in blank, pads of bills of lading, freight bills, and placards, to be used in transporting property for their account with the result that frequently other shipments are solicited, transported, and collected for in their name and without their knowledge or specific authorization. Sometimes no arrangements are made for the removal of the placards upon termination of the lease and lessors use them to get loads without the knowledge of the carriers, and without notifying them keep the entire revenue.

Because of the informality of the arrangements for the use of equipment, questions arise as to liability for accidents resulting in injuries to the public and as to which insurer is liable at a particular time, the insurer of the authorized carrier or the insurer of the owner, and when the liability of one ends and that of the other begins.

The fact that leases are frequently not in writing is an obstacle to enforcement of the provisions of the act. Proof of unauthorized operations is hampered when, upon investigation, the parties say an oral lease was in existence. Gypsy operators realize that almost anything can be done under a so-called oral lease and, if they know the name of a carrier having rights, may carry a shipment in its name and, if caught in a road check, state that they are under lease to that carrier. Even if this statement is not

believed by the Bureau's representative and a check is made and it is determined that the shipment is being transported without authority, all that has been obtained is evidence of one unauthorized shipment.

Sometimes the informality of the arrangement for the use of his vehicle operates to the detriment of the owner-operator. He may be required to wait an unreasonable time for his money, or be unable to get the carrier to unload the vehicle promptly, and receive no payment from lessee for the use of the vehicle as a temporary warehouse.

Insufficiency of control over operation of vehicles. It is a frequent practice among some carriers to lease only part of the carrying capacity of a vehicle, and among some owners to lease the same vehicle to several carriers for use at the same time. In the latter instance, formal leases may even be executed which provide that each lessee shall have full dominion and control over the vehicle and that the driver shall be the employee of each lessee. In practice, however, it is usually the lessor which retains the control. Sometimes vehicles are leased to carriers which are under lease to private carriers at the same time. Intrastate carriers transport shipments on their own authority and interstate shipments allegedly under a lease of their vehicle to an authorized carrier at the same time. In case of accident, it is difficult to determine which carrier is liable.

In trip leasing, difficulties arise in establishing responsibility for accidents which occur after the owner driver has completed delivery. The carrier may deny liability [fol. 109] and the owner may lack insurance after the leased vehicle has delivered the shipment.

Some of the same difficulties arise when vehicles are leased consecutively to different carriers, subleased, or used only occasionally under long-term leases.

Insufficiency of control over drivers. Carriers do not have sufficient control over some operators of leased vehicles to make them take 8-hour rests after operating 10 hours. Gypsies will roam over a wide territory, hauling for carrier after carrier, no one of which has control over or knowledge of the time element affecting compliance with the hours-of-service requirements. Specifically, examples

can be drawn of service for 4 separate carriers during an 8- or 10-day period with 24 to 30 hours on-duty time for each carrier, with the owner-operator ostensibly under the requirements as to each individual carrier. It would be an extremely laborious if not impossible task for the Bureau's representatives to follow these gypsies in the records of carrier after carrier, particularly when they work for carriers located in several districts in a given period of time.

Lack of control over the operators of leased vehicles presents other problems. Complaints most frequently made against owner-operators are that they take the most direct route to destination, regardless of the carrier's operating authority, drive while drunk, carry liquor in the cab, transport unauthorized persons, particularly women, operate unsafe equipment, and charge gasoline and tires to the carriers without their authorization.

Loss of contacts with shippers. The arrangements which carriers make with vehicle owners sometimes result in the latter obtaining control of the traffic through contacts which they establish with shippers. After the vehicle owners become acquainted with shippers through hauling under lease to a carrier, they haul for the shipper under lease, without reporting it to the carrier. Owners of a vehicle or of a fleet of vehicles, sometime control certain traffic. There are shipping clerks and traffic officials of large companies who prefer to deal directly with owner-operators instead of with carriers. There are reports of gifts by owner-operators to shipping clerks and traffic officials of large shippers for information respecting the movement of particularly desirable pay loads. There also are reports that traffic managers or other officials of certain shippers are operators or owners of fleets of trucks which haul property of the shippers under lease to authorized carriers.

Avoidance of carrier responsibilities. Carriers which depend on leased equipment are handicapped during certain seasons when truck owners can get greater returns from the transportation of exempt commodities. Those which depend on gypsies do not know from day to day what equipment they will have available to transport traffic

which is offered. Their ability to move traffic depends upon the number of gypsies which communicate with them for loads on a given day.

[fol. 110] Some carriers pay owner-drivers on a percentage basis and deny responsibility for claims, saying each driver is responsible for his individual actions. They have authorized truck owners to solicit business with the understanding that it will be hauled in their trucks under lease to the carrier. They do not pay proper attention to complaints of shippers since they do not solicit the business. Sometimes they refer all calls to the truck owners and have no connection with the operation except to collect a percentage of the revenue.

Shippers of household goods usually expect to have service from the carrier which gives the estimate. When that carrier transports the shipment on another carrier's authority, the shipper may be required to handle claims with a carrier of which it never heard.

In the operation of leased vehicles there is frequent disregard of the regulations governing the indentification of vehicles.

In leases between carriers in connection with through routes, the parties frequently bypass a common point in their respective rights. The point of theoretical interchange may be far removed from any terminal of either carrier. Where both carriers have rights over part of the through route, drivers have been checked who were not certain which of the two carriers they represented. Some carriers also do not keep account of the transportation in accordance with the requirements of the Commission.

Accidents occur to leased vehicles as to which no reports are made because the carrier does not know of them or, by the time it learns of them, the owner drivers involved cannot be located. Where claims are filed after the owner drivers have disappeared, carriers are unable to ascertain essential facts as to liability.

The reports of carriers which operate leased vehicles do not show a clear picture as to expenses incurred in license fees, gasoline, tires, drivers' wages, repairs, maintenance, and other items which go into reports covering company-owned equipment. The practice of hiring equipment for a

percentage of the revenue tends to make operating statistics of motor carriers worthless.

Abuses of leasing and interchanging vehicles. The practices of leasing and interchanging vehicles are used as devices to circumvent the provisions of the Act. Equipment arrangements are often merely subterfuges to enable carriers to engage in transportation without appropriate authority, to extend the scope of their operations unlawfully, or to gain an unfair advantage over competitors.

Under the guise of leases of equipment, carriers which have no facilities with which to operate and which are not willing to render the service, collect a percentage of the revenue for the use of their rights by others who do have the facilities and who are willing to provide the service. These carriers protest applications of others for authority [fol. 111] to furnish the service on the ground that they have facilities to furnish the service needed. The facilities to which they refer are those of the ones applying for authority.

Abuses of the practices of leasing and interchanging vehicles result in motor carriers usurping functions of the Commission. The so-called lessee of vehicles is frequently in effect granting operating authority to the lessor and charging a percentage of the revenue involved for the right.

[fol. 112] APPENDIX E TO APPENDIX "A"

Rules Prescribed Governing the Practices of Authorized Carriers of Property by Motor Vehicle in Interstate or Foreign Commerce in (1) Augmenting Equipment, (2) Interchanging of Equipment, and (3) Renting Vehicles or Equipment to Private Carriers or Shippers.

§ 207.2 *Definitions.* (a). *Authorized carrier.* A person or persons authorized to engage in the transportation of property as a common or contract carrier under the provisions of Sections 206, 207, or 209 of the Interstate Commerce Act.

(b). *Equipment.* A motor vehicle, straight truck, tractor, semi-trailer, full trailer, combination tractor-and-

semi-trailer, combination straight truck and full trailer, and any other type of equipment used by authorized carriers in the transportation of property for hire.

(c). *Interchange of equipment.* The physical exchange of equipment between motor common carriers or the receipt by one such carrier of equipment from another such carrier, in furtherance of a through movement of traffic, at a point or points which such carriers are authorized to serve.

(d). *Regular employee.* A person not merely an agent but regularly in exclusive full-time employment.

(e). *Agent.* A person duly authorized to act for and on behalf of an authorized carrier.

(f). *Non-carrier.* A person other than an authorized carrier.

(g). *Owner.* A person to whom title to equipment has been issued or who has lawful possession of equipment, and has the same registered and licenced in any State or States or the District of Columbia in his or its name.

§ 207.3 Exemptions. Other than § 207.4 (c) and (d), relative to inspection and identification of equipment, these rules shall not apply—

(a). To equipment leased by one authorized carrier operating over regular routes to another authorized carrier operating over regular routes and operated between points and over routes which both lessor and lessee are authorized to serve, and to equipment leased by one authorized carrier operating over irregular routes to another such carrier and operated between points and within territory which both the lessor and lessee are authorized to serve;

(b) To equipment utilized wholly or in part in the transportation of railway express traffic, or in substituted motor-for-rail transportation of railroad freight moving between points that are railroad stations on railroad billing;

(c) To equipment utilized in transportation performed solely and exclusively within any municipality, contiguous municipalities, or commercial zone, as defined by the Commission;

(d). To equipment utilized by an authorized carrier in transportation performed pursuant to any plan of operation approved by the Commission in a proceeding arising under section 5 of the Interstate Commerce Act, or

[fol. 113] (e). To equipment without drivers leased by an authorized carrier from an individual, copartnership or corporation, whose principal business is the leasing of equipment without drivers for compensation.

§ 207.4 *Augmenting equipment.* Other than equipment exchanged between motor common carriers in interchange service as defined in § 207.5 of these rules, authorized carriers may perform authorized transportation in or with equipment which they do not own only under the following conditions:

(a). The contract, lease, or other arrangement for the use of such equipment—

(1). Shall be made between the authorized carrier and the owner of the equipment;

(2). Shall be in writing and signed by the parties thereto, or their regular employees or agents duly authorized to act for them in the execution of contracts, leases, or other arrangements;

(3). Shall specify the period for which it applies, which shall be not less than 30 days when the equipment is to be operated for the authorized carrier by the owner or employees of the owner; provided, that for six months from the date these rules become effective, equipment specified in section 203(b)(6) of the Act, 49 U.S.C. 303(b)(6), may be utilized by authorized carriers under contracts, leases or other arrangements applying for less than 30 days, only under the following conditions:

(i). The equipment is being returned over reasonably direct routes from the destinations of shipments of the commodities specified in section 203(b)(6) of the Act, 49 U.S.C. 303(b)(6), or points intermediate thereto, or the commercial zones of such destinations and intermediate points, as defined by the Commission, to the

origins of such shipments, or points intermediate thereto, or the commercial zones of such origins and intermediate points as defined by the Commission;

(4). Shall provide for the exclusive possession, control and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the authorized carrier, as follows:

(i). When entered into by parties other than authorized carriers of household goods, as defined by the Commission, for the duration of the said contract, lease or other arrangement, and the equipment shall not be further leased or sublet to any other authorized carrier or non-carrier for such duration;

(ii). When entered into by authorized carriers of household goods, as defined by the Commission, during the period the equipment is operated by or for the authorized carrier, lessee;

[fol. 114] (5). Shall specify the compensation to be paid by the lessee for the rental of the leased equipment; provided, however, that such compensation shall not be computed on the basis of any division or percentage of any applicable rate or rates on any commodity or commodities transported in said vehicle or on a division or percentage of any revenue earned by said vehicle during the period for which the lease is effective;

(6). Shall specify the time and date or the circumstance on which the contract, lease, or other arrangement begins, and the time or the circumstance on which it ends. The duration of the contract, lease or other arrangement shall coincide with the time for the giving of receipts for the equipment, as required by paragraph (b) of this section; and

(7). Shall be executed in triplicate; the original shall be retained by the authorized carrier in whose service the equipment is to be operated, one copy shall be retained by the owner of the equipment, one copy

shall be carried on the equipment specified therein during the entire period of the contract, lease, or other arrangement, unless a certificate as provided in paragraph (d)(2) of this section is carried in lieu thereof.

(b). *Receipts.* When possession of the equipment is taken by the authorized carrier or its regular employee or agent duly authorized to act for it, said carrier, employee, or agent shall give to the owner of the equipment, or the owner's employee or agent a receipt specifically identifying the equipment and stating the date and the time of day possession thereof is taken; and when the possession by the authorized carrier ends, it or its employee or agent shall obtain from the owner of the equipment, or its regular employee or agent duly authorized to act for it, a receipt specifically identifying the equipment and stating therein the date and the time of day possession thereof is taken.

(c). *Inspection of equipment.* It shall be the duty of the authorized carrier, before taking possession of equipment, to inspect the same or to have the same inspected by a person who is competent and qualified to make such inspection and has been duly authorized by such carrier to make such inspection as a representative of the carrier, in order to insure that the said equipment complies with parts 193 and 196 of the Motor Carrier Safety Regulations (Rev.), pertaining to "Parts and Accessories Necessary for Safe Operation", and "Inspection and Maintenance", and if explosives or other dangerous articles are to be transported thereon, further to inspect and check such vehicles or equipment to insure that they or it complies with Part 197 of the said safety regulations pertaining to "Safe Transportation of Explosives". The person making the inspection shall certify the results thereof on a report in the form hereinafter set forth, which report shall be retained and preserved by the authorized carrier, and if his inspection discloses that the equipment does not comply with the requirements of the said safety regulations, possession thereof shall not be taken. In all instances in which the inspection required by this rule is made, the authorized carrier, if an individual, or a member of the

copartnership if the authorized carrier is a copartnership, or one of the officials thereof if the authorized carrier is a corporation, shall certify on the inspection report that the person who made the inspection whether an employee or person other than an employee, is competent and qualified to make such inspection and has been duly authorized by such carrier to make such inspection as a representative of such authorized carrier:

[fol. 115] Report of Vehicle Inspection

Description of vehicle: Make.....Year.....Model.....
Serial No.....
Type: Tractor.....Trailer.....Semitrailer.....
License plate: No.....State.....
Owner's name .....
Name of authorized carrier.....

Indicate in the proper column the result of the inspection of each item listed:

Item	*Not Defective*	*Defective*	*Description of Defect*
Body	.....	.....	.....
Brakes	.....	.....	.....
Cooling system	.....	.....	.....
Drive line	.....	.....	.....
Emergency equipment	.....	.....	.....
Engine	.....	.....	.....
Exhaust	.....	.....	.....
Fuel system	.....	.....	.....
Glass	.....	.....	.....
Horn	.....	.....	.....
Leaks	.....	.....	.....
Lights (state which)	.....	.....	.....
Reflectors	.....	.....	.....
Speedometer	.....	.....	.....
Springs	.....	.....	.....
Steering	.....	.....	.....
Tires	.....	.....	.....
Wheels	.....	.....	.....
Windshield wiper	.....	.....	.....

Any other items requiring attention.....
.....

I hereby certify that on the day of , I carefully inspected the equipment described above and that this is a true and correct report of the result of such inspection.

.....
(Signature of person making inspection).

I hereby certify that on the date stated above the person who made the inspection covered by this report was competent and qualified to make such inspection and was duly authorized to make such inspection as a representative of .....
.....
(Name of authorized carrier)

Date..... .....
(Signature of authorized carrier or copartner or officer of authorized carrier.)

[fol. 116] (d). *Identification of equipment.* The authorized carrier acquiring the use of equipment under this rule shall properly and correctly identify such equipment as operated by it when such equipment is operated by or for such carrier, during the period of the lease, contract, or other arrangement, in accordance with the Commission's requirements in Ex Parte No. MC-41, Part 166, Identification of Motor-Carrier Vehicles. If a removable device is used to identify the authorized carrier as the operating carrier, such device shall be on durable material such as wood, plastic, or metal, and bear a serial number in the authorized carrier's own series so as to keep proper record of each of the identification devices in use.

(1). The authorized carrier operating equipment under these rules shall remove any legend, showing it as the operating carrier, displayed on such equipment, and shall remove any removable device showing it as the operating carrier, before relinquishing possession of the equipment.

(2) Unless a copy of the lease, contract, or other arrangement is carried on the equipment, as provided in paragraph (a) (7) of this section, the authorized carrier or its regular employee or agent shall prepare a statement certifying that the equipment is being operated by it, which shall specify the name of the owner, the date of the lease, contract, or other arrangement, the period thereof, any restrictions therein relative to the commodities to be transported, and the ~~location of the premises where~~ the original of the lease, contract or other arrangement is kept by the authorized carrier, which certificate shall be carried with the equipment at all times during the entire period of the lease, contract or other arrangement.

(e). *Driver of equipment.* Before any person other than a regular employee of the authorized carrier is assigned to drive equipment operated under these rules, it shall be the duty of the authorized carrier to make certain that such driver is familiar with, and that his employment as a driver will not result in, violation of any provision of Parts 192, 193, 195, and 196 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Driving of Motor Vehicles", "Parts and Accessories Necessary for Safe Operations", "Hours of Service of Drivers", and "Inspection and Maintenance", and to require such driver to furnish a certificate of physical examination in accordance with Part 191 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Qualifications of Drivers", or, in lieu thereof, a photostatic copy of the original certificate of physical examination, which shall be retained in the authorized carrier's file.

(f). *Record of use of equipment.* The authorized carrier utilizing equipment operated under these rules shall prepare and keep a manifest covering each trip for which the equipment is used in its service, containing the name and address of the owner of such equipment, the make, model, year, serial number, and the State registration number of the equipment, and the name and address of the driver operating the equipment, point of origin, the time and date of departure, the point of final destination, and

the authorized carrier's serial number of any identification device affixed to the equipment. During the time that equipment subject to these rules is operated there shall be carried with the equipment, bills of lading, waybills, [fol. 117] freight bills, manifests, or other papers identifying the lading, which shall clearly indicate that the transportation of the property carried is under the responsibility of the authorized carrier, which papers, together with the truck manifest, shall be preserved by the authorized carrier.

§ 307.5 *Interchange of equipment.* Common Carriers of property may by contract, lease, or other arrangement, interchange any equipment defined in § 207.2 of these rules with one or more other common carriers of property, or one of such carriers may receive from another such carrier, any of such equipment, in connection with any through movement of traffic, under the following conditions:

(a). *Agreement providing for interchange.* The contract, lease, or other arrangement providing for interchange shall specifically describe the equipment to be interchanged; the specific points of interchange; the use to be made of the equipment and the consideration for such use; and shall be signed by the parties to the contract, lease or other arrangement, or their regular employees or agents duly authorized to act for them, in the execution of such contracts, leases, or other arrangements;

(b). *Authority of carriers participating in interchange:* The certificates of public convenience and necessity held by the carriers participating in the interchange arrangement must authorize the transportation of the commodities proposed to be transported in the through movement, and service from and to the point where the physical interchange occurs.

(c). *Driver of interchanged equipment.* Each carrier must assign its own driver to operate the equipment that is proposed to be operated from and to the point or points of interchange and over the route or routes or within the territory authorized in the participating carriers' respective certificates of public convenience and necessity.